



CITY OF KIRKLAND

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MEMORANDUM

To: Kurt Triplett, City Manager

From: Oskar Rey, Assistant City Attorney

Date: July 8, 2016

Subject: Ordinance Amending Code Enforcement Provisions Relating to Trees and Surface Water

RECOMMENDATION:

It is recommended that the City Council adopt the attached Ordinance amending Kirkland Municipal Code (KMC) Sections 1.12.100, "Special provisions relating to enforcement of tree regulations" and 1.12.200 "Special provisions relating to enforcement of KMC Chapter 15.52 (Surface Water Management)." Through approval by the Council of the consent calendar, the Ordinance will be adopted.

BACKGROUND DISCUSSION:

KMC Chapter 1.12 contains the City's code enforcement regulations. In a typical code enforcement case, City staff issues a Notice of Civil Violation to the person responsible for the violation¹ and a hearing is set before the Hearing Examiner to determine whether there is a violation and to impose fines if appropriate. See KMC Sections 1.12.040 and 1.12.050.

The City currently uses a different process for violations involving trees and surface water. Under KMC 1.12.100 (trees) and KMC 1.12.200 (surface water), City staff issues a notice of fines that are due for the alleged violation. In the case of trees, the notice will also require a restoration plan in appropriate cases. In the case of surface water, the notice may require that the person responsible for the violation clean and remove any pollutants from any portion of a private system that connects to the City's stormwater system.

If a person does not pay fines or perform required restoration, the City issues a Notice of Civil Violation to the person and a hearing is scheduled before the Hearing Examiner. With respect to trees,² KMC Section 1.12.100(e) provides:

Failure to Restore or Pay Fines. The city may issue a notice of civil violation to the person(s) who fails to restore or pay fines according to the procedures set forth in this chapter.

¹ KMC Section 1.12.100 refers to "person" or "person(s)" and KMC Section 1.12.200 refers to "responsible party." For the sake of consistency, this memo uses "person" throughout.

² The language of KMC Section 1.12.200(d) relating to surface water is substantially similar.

In recent tree enforcement cases, the Hearing Examiner has interpreted this language to limit the jurisdiction of the Hearing Examiner to the issue of whether the person responsible for the violation has failed to restore or pay the applicable fine. Under this interpretation, the Hearing Examiner does not have jurisdiction to determine whether the responsible person violated applicable tree or surface water regulations.

When the City adopted these provisions, its intent was for the Hearing Examiner to determine whether the person committed a violation of the City's tree regulations in addition to whether the person failed to pay the fine due and perform restoration. From a due process standpoint, a person who disputes the City's finding of a violation should be able to obtain independent review of that issue from the Hearing Examiner.

The proposed amendments to KMC Sections 1.12.100 and 1.12.200 clarify that when the City issues a Notice of Civil Violation in tree and surface water cases, the Hearing Examiner shall decide whether the person committed a violation of City tree or surface water regulations as well as issues relating to restoration and the amount of any fines.

ORDINANCE O-4525

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CODE ENFORCEMENT AND AMENDING CERTAIN SECTIONS OF CHAPTER 1.12 OF THE KIRKLAND MUNICIPAL CODE RELATING TO TREE AND SURFACE WATER CODE VIOLATIONS

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

2 Section 1. Kirkland Municipal Code ("KMC") Section 1.12.100 is
3 hereby amended to read as follows:

4 **1.12.100 Special provisions relating to enforcement of tree**
5 **regulations in Kirkland Zoning Code Chapter 95.**
6

7 (a) General Requirements. This section applies to all trees in the city,
8 including private property trees, public property trees and street trees.
9 Enforcement shall be conducted in accordance with procedures set forth
10 in this chapter. Special enforcement provisions related to tree
11 conservation are set forth in this section.

12 (b) Authority. It shall be the duty of the applicable department
13 director to administer the provisions of this section.

14 (c) Fines for Tree Removal.

15 (1) Each unlawfully removed or damaged tree shall constitute a
16 separate violation.

17 (2) Any person who aids or abets in the violation shall be considered
18 to have committed a violation for purposes of fines.

19 (3) Fines shall be assessed in accordance with Table 1.12.100. Fines
20 are due according to the corrective action described in the notice of tree
21 fines and restoration due. The applicable department director may elect
22 not to seek fines if he or she determines that the circumstances do not
23 warrant imposition of fines in addition to restoration.

Table 1.12.100	
Types of Violations	Allowable Fines per Violation
1. Removal of tree(s) approved to be removed, but prior to final tree plan approval or issuance of a city tree removal permit	\$100.00 per tree
2. Removal or damage of tree(s) that are or would be shown to be retained on an approved tree plan or any other violation of approved tree protection plan	\$1,000 per tree
3. Removal of tree(s) without applying for or obtaining a required city permit	\$1,000 per tree

24 (d) Tree Restoration.

25 (1) Violators of Kirkland Zoning Code Chapter 95 or of a permit issued
 26 thereunder shall be responsible for restoring unlawfully damaged areas
 27 in conformance with a restoration plan approved by the applicable
 28 department director. The restoration plan shall provide for repair of any
 29 environmental and property damage and restoration of the site. The
 30 goal of the restoration plan shall be a site condition that, to the greatest
 31 extent practical, equals the site condition that would have existed in the
 32 absence of the violation. In cases where the violator intentionally or
 33 knowingly violated this chapter or has committed previous violations of
 34 this chapter, restoration costs may be based on the city-appraised tree
 35 value of the subject trees in which the violation occurred, utilizing the
 36 industry standard trunk formula method in the current edition of the
 37 "Guide for Plant Appraisal." If diameter of removed tree is unknown,
 38 determination of the diameter size shall be made by the applicable
 39 department director by comparing size of stump and species to similar
 40 trees in similar growing conditions. The amount of costs above the
 41 approved restoration plan will be paid into the city forestry account.

42 (2) Restoration Plan Standards. The restoration plan shall be in
 43 accordance to the following standards:

44 (A) The number of trees required to be planted is equal to the number
45 of tree credits of illegally removed trees according to Kirkland Zoning
46 Code Table 95.33.1.

47 (B) The minimum size for a tree planted for restoration is twelve-foot-
48 tall conifer and three-inch caliper deciduous or broadleaf evergreen tree.
49 The city may approve smaller restoration tree sizes at a higher
50 restoration ratio, provided the site has capacity for the additional trees
51 and the results of restoration at a higher restoration ratio are as good
52 or better than at the normal ratio. The smallest allowable alternatives
53 to the normal restoration requirements shall be two eight-foot conifers
54 for one twelve-foot conifer or two two-inch caliper deciduous for one
55 three-inch caliper deciduous tree.

56 (C) In the event the violators cannot restore the unlawfully removed
57 or damaged trees, the violators shall make payment to the ~~e~~City
58 ~~f~~Forestry ~~a~~Account. Unless otherwise determined to base the restoration
59 costs on appraised value, the amount paid will be the city's unit cost for
60 a restoration tree multiplied by the number of outstanding tree credits.
61 The city's unit cost is based on the current market cost of purchase,
62 installation and three-year maintenance for a minimum-sized tree for
63 restoration.

64 (D) The restoration plan shall include a maintenance plan and an
65 agreement or security to ensure survival and maintenance of restoration
66 trees for a three-year period unless the violation was on a site with an
67 approved tree plan, in which case the maintenance period is five years.

68 (e) Hearing on Violation, Failure to Restore or Failure to Pay Fines.
69 The city may issue a notice of civil violation to the person(s) who violates
70 Kirkland Zoning Code Chapter 95 or a permit issued thereunder and fails
71 to restore or pay fines according to the procedures set forth in this
72 chapter. The hearing on the notice of civil violation shall be held in
73 accordance with KMC 1.12.050 and shall determine whether the
74 person(s) violated applicable tree regulations or permit conditions and
75 impose any appropriate fine(s) for such violation(s), as well as whether
76 the person(s) failed to restore or pay fines according to the procedures
77 set forth in this chapter.

78 Section 2. KMC Section 1.12.200 is hereby amended to read as
79 follows:

80 **1.12.200 Special provisions relating to enforcement of Chapter**
81 **15.52 (Surface Water Management).**

82 (a) General Requirements. This section applies to violations of
83 Chapter 15.52, including illicit discharges and connections that
84 discharge into the municipal storm drain system and/or surface and
85 ground waters. Enforcement shall be conducted in accordance with

86 procedures set forth in this chapter. Special enforcement provisions
87 related to illicit discharges and connections are set forth in this section.

88 (b) Authority. It shall be the duty of the public works director or
89 designee to administer the provisions of this section.

90 (c) Fines for illicit discharges and connections and other violations
91 of Chapter 15.52.

92 (1) Each action or omission taken in violation of Chapter 15.52
93 shall constitute a separate violation.

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

96 (3) Fines for a violation shall be determined using the enforcement
97 penalty matrix (Table 1) and administered per violation.

Enforcement Evaluation Criterion	No (0 points)	Possibly (1 point)	Definitely (2 points)
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 Noncompliance?			
8) Repeat Violation?			

98 The enforcement penalty matrix (Table 1) is comprised of a set of
99 criteria formulated as questions for the director to evaluate and answer.
100 The director uses the guidelines below to determine the total points to
101 be assessed according to the violation. The civil penalty is determined
102 by the total score of the matrix.

- 103 1. Did the violation result in a public health risk?
104 a. Answer "no" if there is no evidence to support a claim of public
105 health risk or adverse health effects.
106 b. Answer "possibly" if evidence supports a claim of public health
107 risk and there is a plausible connection between this violation and health
108 effect.
109 c. Answer "definitely" if there is direct evidence linking public
110 health risk or adverse effects with the violation.
- 111 2. Did the violation result in environmental damage or adversely
112 impact infrastructure?
113 a. Answer "no" if there is no evidence to support a claim of
114 environmental or infrastructure damage.
115 b. Answer "possibly" if environmental or infrastructure damage
116 can be inferred from evidence or knowledge of the effects of the
117 violation.
118 c. Answer "definitely" if there is direct evidence linking
119 environmental or infrastructure damage with the violation.
- 120 3. Was the action a willful and knowing violation?
121 a. Answer "no" if the violator obviously did not know that the
122 action or inaction constituted a violation.
123 b. Answer "possibly" if the violator should have known.
124 c. Answer "definitely" if the violator clearly knew or was previously
125 informed of the violation by the city's inspectors.
- 126 4. Was the responsible party unresponsive in correcting the
127 violation?
128 a. Answer "no" if the violation was corrected as soon as the
129 responsible party learned of it.
130 b. Answer "possibly" if the violation was corrected in a less timely
131 and cooperative fashion.
132 c. Answer "definitely" if the responsible party made no attempt to
133 correct the violation.
- 134 5. Was the violation a result of improper operation or inadequate
135 maintenance?
136 a. Answer "no" if the violation was not the result of improper
137 operation or inadequate maintenance.
138 b. Answer "possibly" if operation and/or maintenance was
139 completed but a violation still occurred.
140 c. Answer "definitely" if the violation was a result of improper
141 operation or inadequate maintenance.
- 142 6. Did the responsible party fail to obtain and comply with the
143 necessary permits, certifications and approvals from the agency with
144 jurisdiction to operate at the time of the violation?
145 a. Answer "no" if the paperwork was complete and appropriate for
146 the job or task that caused the violation.
147 b. Answer "possibly" if the responsible party obtained and received
148 approval for some but not all of the required permit(s).

149 c. Answer "definitely" if the responsible party either did not obtain
150 the necessary permits or did obtain permits but did not comply with
151 their conditions.

152 7. Did anyone benefit economically from noncompliance?

153 a. Answer "no" if it is clear that no one gained an economic
154 benefit.

155 b. Answer "possibly" if someone might have benefited.

156 c. Answer "definitely" if the economic benefit is quantifiable.

157 8. Is this violation a repeat violation?

158 a. Answer "no" to indicate that there have been no prior violations.

159 b. Answer "possibly" to indicate that there has been one prior
160 violation.

161 c. Answer "definitely" to indicate that there have been three or
162 more prior violations.

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

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

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

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

175 (d) Hearing on Violation, Failure to Remove Pollutant or Failure to
176 Pay Fines. The city may issue a notice of civil violation to the responsible
177 party who violates KMC Chapter 15.52 and who fails to pay fines or to
178 remove pollutants from a private storm system which that enters into
179 the municipal storm system according to the procedures set forth in this
180 chapter. The hearing on the notice of civil violation shall be held in
181 accordance with KMC 1.12.050 and shall determine whether the
182 responsible party violated KMC Chapter 15.52 and impose any
183 appropriate fine(s) for such violation(s), as well as whether the
184 responsible party failed to pay fines or remove pollutants from a private

185 system that enters into the municipal storm system according to the
186 procedures set forth in this chapter.

187 Section 3. If any section, subsection, sentence, clause, phrase,
188 part or portion of this ordinance, including those parts adopted by
189 reference, is for any reason held to be invalid or unconstitutional by any
190 court of competent jurisdiction, such decision shall not affect the validity
191 of the remaining portions of this ordinance.

192 Section 4. This ordinance shall be in force and effect five days
193 from and after its passage by the Kirkland City Council and publication
194 pursuant to Section 1.08.017, Kirkland Municipal Code in the summary
195 form attached to the original of this ordinance and by this reference
196 approved by the City Council.

197 Passed by majority vote of the Kirkland City Council in open
198 meeting this ____ day of _____, 2016.

199
200 Signed in authentication thereof this ____ day of _____,
201 2016.

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4525

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CODE ENFORCEMENT AND AMENDING CERTAIN SECTIONS OF CHAPTER 1.12 OF THE KIRKLAND MUNICIPAL CODE RELATING TO TREE AND SURFACE WATER CODE VIOLATIONS

SECTION 1. Amends Kirkland Municipal Code (KMC) Section 1.12.100 related to special provisions relating to enforcement of tree regulations.

SECTION 2. Amends KMC Section 1.12.200 related to special provisions relating to enforcement of KMC Chapter 15.52 (Surface Water Management).

SECTION 3. Provides a severability clause for the ordinance.

SECTION 4. 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