



CITY OF KIRKLAND

Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033
425.587-3225 - www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Eric Shields, AICP, Planning Director
Nancy Cox, AICP, Development Review Manager

Date: August 21, 2014

Subject: Amendments to Kirkland Municipal Code (KMC) Chapter 1.12 Code Enforcement

RECOMMENDATION

Council adopts an ordinance to amend the Code Enforcement regulations for the City. The amendments clarify tree fines and penalties, provide upper limits for penalties, and add incentives for compliance.

BACKGROUND DISCUSSION

KMC Chapter 1.12 Code Enforcement was adopted in 2011. After three years in effect, staff is proposing some fine-tuning amendments. In April, 2014, the Planning, Housing and Economic Development Committee reviewed the proposed amendments. No major concerns were expressed by the Council members on the committee.

Monetary penalties

The proposed amendments to this section are to clarify the monetary penalty schedule. Some of the amendments simply clarify existing language and others set a new upper limit on the penalty amount. The 2011 ordinance instituted a process whereby a Notice of Civil Violation can be issued if voluntary compliance efforts are unsuccessful. The Notice of Civil Violation sets a hearing date in front of the Hearing Examiner where the Examiner determines whether a violation has occurred and sets monetary penalties. The Examiner's decision typically sets the penalties from the date the Notice of Civil Violation is issued until compliance is confirmed. Violations are typically \$100 per day per violation. The penalties can be doubled for repeat violations. Without some upper limit, the fines can become quite large and staff has to make a decision when to cut them off and send the case to collection. The preferred outcome of staff is always code compliance and not collection of fines. Staff is recommending an upper limit of \$10,000 per violation to clarify this situation.

Staff checked other cities' codes, and found that all codes are set up differently making direct comparisons difficult. However, a sampling of the results is: Redmond has a maximum civil penalty of \$1000 for each violation. Bellevue and Bothell have a penalty structure similar to Kirkland's current rules with no maximum ceiling. Snohomish County

has a \$10,000 ceiling per violation for noncommercial violations. Excerpts from the various codes are included in Attachment 1.

Incentives for compliance

It is somewhat unusual for a violator not to comply with the Examiner's decision and correct the violation. However, occasionally this occurs. Once staff has the examiner's decision, the proposed amendments provide new incentives for the violator to come into compliance by providing:

- The ability for the city to reduce penalties in certain situations, and
- The ability for the city to record a certificate of noncompliance on the property.

Tree fines

The 2011 ordinance consolidated the city's code enforcement regulations that were scattered throughout the zoning and municipal codes into one chapter. One area of consolidation was to move the tree enforcement regulations from the zoning code into the KMC. KMC 1.12.100 establishes a schedule for tree fines and requires site restoration when there is a violation. A proposed amendment to this section clarifies our current practice. Tree fines and restoration are due immediately and if the fines and restoration are not provided, then the City may issue a Notice of Civil Violation with the hearing date. If this occurs, the Examiner determines if a violation exists and sets the corrective action including penalties. The violator may owe the tree fines, restoration and additional per day penalties until compliance is achieved.

Attachment

1 Other Jurisdictions' Codes

cc: CAM14-00868

OTHER JURISDICTIONS' CODES

Bothell City Municipal Code:

11.20.010 Penalties.

A. Violations of Bothell Municipal Code.

1. Civil Penalty.

a. Any person violating or failing to comply with any of the provisions of this code, with the exception of the SMP, BMC Title [15](#), Subdivisions, and BMC Title [18](#), Utilities Infrastructure, shall be subject to a maximum penalty in the amount of \$250.00 per day for each violation from the date set for compliance until compliance with the order is achieved. In addition to the actual penalty imposed, should the city violation be affirmed, the hearing examiner shall assess to the appellant an amount for the costs incurred by the city, and the examiner in prosecuting the appeal before the hearing examiner. These costs shall include those expenses incurred in preparing the appeal, issuing public notice as required under BMC [11.20.009](#)(A), general clerical expenses, staff and examiner preparation time, site inspections, city attorney costs, and other expenses incurred by the city. City prosecution costs shall be waived should the violator correct the alleged violation 10 or more working days prior to the scheduled appeal hearing; provided, however, correction of the alleged violation prior to the scheduled appeal hearing shall not preclude the city from pursuing imposition of civil penalties at the hearing.

b. In addition to any penalty which may be imposed by the city, any person violating or failing to comply with any of the provisions of this code, with the exception of the SMP and BMC Title [15](#), Subdivisions, shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to the violation.

c. The penalty imposed by this section shall be collected by civil action brought in the name of the city. The director shall notify the city attorney in writing of the name of any person subject to the penalty, and the city attorney shall, with the assistance of the director, take appropriate action to collect the penalty.

d. The violator may show as full or partial mitigation of liability as determined by the hearing examiner:

(1) That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or

(2) That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition of the property or circumstance beyond the control of the defendant.

2. Special Penalties for Noise and Construction Work Hour Infractions.

a. Civil Noise Infraction. Any person violating or failing to comply with the provisions of Chapter [8.26](#) BMC shall be subject to a civil noise infraction for which a monetary penalty may be assessed and a stop work order issued. Penalties shall be as follows:

(1) First Offense. If a person has not violated the provisions of Chapter [8.26](#) BMC during the one-year period preceding the most recent violation, a warning shall be given and no monetary penalty shall be assessed.

(2) Second Offense. If a person has violated the provisions of Chapter [8.26](#) BMC within the one-year period preceding the most recent violation, a citation shall be issued assessing a monetary penalty in the amount of \$250.00 and a stop work order shall be issued.

(3) Third Offense. If a person has violated the provisions of Chapter [8.26](#) BMC twice within the one-year period preceding the most recent violation, a citation shall be issued assessing a monetary penalty in the amount of \$250.00, plus issuance of a stop work order. During the stop work period the violator shall submit a plan that includes the methods and operational changes to be implemented to prevent any future violations. The plan shall be reviewed and approved by the public improvements director prior to rescinding the stop work order.

(4) Fourth Offense and Any Additional Offense. If a person has violated the provisions of Chapter [8.26](#) BMC three or more times within the one-year period preceding the most recent violation, criminal penalties, as outlined under subsection (A)(4) of this section, shall be assessed.

3. Special Penalties for BMC Title [18](#), Utilities Infrastructure.

a. Basic Penalty. Each day or portion thereof during which a violation of the title exists is a separate violation of the title. The cumulative monetary penalty for each violation of the title shall be as follows:

(1) The penalty for the first day a violation exists is \$100.00;

(2) The penalty for the second day a violation exists is \$200.00;

(3) The penalty for the third day a violation exists is \$300.00;

(4) The penalty for the fourth day a violation exists is \$400.00;

(5) The penalty for each day a violation exists beyond four days is \$500.00.

Schedule of Penalties per Violation

Day	Fine for That Day	Cumulative Total
1	\$100.00	\$100.00

2	\$200.00	\$300.00
3	\$300.00	\$600.00
4	\$400.00	\$1,000.00
5	\$500.00	\$1,500.00
6 and up	\$500.00	\$2,000.00 and up \$500.00 per day

b. Triple Penalties. Penalties may be trebled for:

- (1) A repeat violation, which means an additional violation of a requirement of this title for which the responsible party has previously received a notice of violation and failed to correct the violation by the compliance date;
- (2) A violation resulting in physical harm to persons or to private or public property;
- (3) A knowing or deliberate violation. The responsible party shall assume the burden of proof for demonstrating that the violation was not deliberate;
- (4) A violation resulting from gross negligence or reckless conduct.

c. Reduction of Penalties. Penalties may be reduced based upon one or more of the following mitigating factors:

- (1) The responsible party shows due diligence and/or substantial progress in correcting the violations;
- (2) Another responsible party was the primary cause of the violation;
- (3) The responsible party was unaware of the violation and had not acted negligently or recklessly.

d. Penalty for Significant Violation. Responsible parties for violations causing significant harm to public health, safety or welfare, the environment, or public or private property shall be assessed the penalties set forth in the schedule above, or an amount equivalent to the economic benefit the responsible party derived from the violation, whichever is greater. "Significant harm" is harm which cannot be fully corrected or mitigated by the responsible party, and which cannot be adequately compensated for by assessment of penalties, costs, expenses or damages under this chapter. Economic benefit may be determined by an increase in market value of property, value received by the responsible party, savings in costs realized by the responsible party, increased income to the responsible party, or any other method reasonable under the circumstances.

e. Damages. Any party who violates any of the provisions of BMC Title [18](#) shall, in addition to any penalties provided for such violation, be liable for any cost, expense, loss or damage occasioned thereby to the city, plus a charge of 15 percent for administrative costs. This clause does not establish a cause of action that may be asserted by any party other than the city. Penalties, damage, costs and expenses may be recovered only by the city.

f. Effect of Payment of Penalties. The person to whom an order is directed is not relieved of the duty to take corrective action to correct the violation by payment of a monetary penalty pursuant to this title.

g. Enforcement and Collection of Penalty. The penalties provided for in this subsection may be enforced as otherwise provided in this chapter or in any other available manner and the penalties imposed may be collected as provided under subsection (A)(1)(a) of this section.

Redmond Municipal Code:

b) Civil Violation and Penalty.

(1) Any person who commits an act which violates (i) any provision listed in RMC Section [1.14.030](#)(a), Applicability; (ii) any approval or approval condition granted under any provision listed in RMC Section [1.14.030](#)(a), Applicability; or (iii) any orders issued under this chapter shall be subject to a civil penalty not to exceed \$1,000 for each violation. The minimum civil penalty shall be \$100.

(2) Any person who fails to act when required to do so by (i) any provision listed in RMC Section [1.14.030](#)(a), Applicability; (ii) any approval or approval condition granted under any provision listed in RMC Section [1.14.030](#)(a), Applicability; or (iii) any orders issued under this chapter shall be subject to a civil penalty not to exceed \$1,000 for each violation. The minimum civil penalty shall be \$100.

City of Bellevue Municipal Code:

E. Monetary Penalty.

1. Except for violations of the sign code (Chapter [22B.10](#) BCC) or violations constituting a noise disturbance as set forth in BCC [9.18.040](#)(A)(4) and (5), the monetary penalty for each violation per day or portion thereof shall be as follows, with adjustments as allowed pursuant to subsection (E)(4) of this section for repeat violations:

- a. First day of each violation, \$100.00;
- b. Second day of each violation, \$200.00;
- c. Third day of each violation, \$300.00;

d. Fourth day of each violation, \$400.00;

e. Each additional day of each violation beyond four days, \$500.00 per day.

2. For violations of the sign code (Chapter [22B.10](#) BCC), the monetary penalty for each violation is \$100.00 per sign per day or portion thereof, with adjustments as allowed pursuant to subsection (E)(4) of this section for repeat violations.

3. For violations constituting a noise disturbance as set forth in BCC [9.18.040](#)(A)(4) and (5), the monetary penalty for each violation is \$250.00, with adjustments as allowed pursuant to subsection (E)(4) of this section for repeat violations.

4. Effect of Repeat Violations.

a. Violations Other than Sign Code (Chapter [22B.10](#) BCC) Violations or Violations Constituting a Noise Disturbance as Set Forth in BCC [9.18.040](#)(A)(4) and (5). Except in the case of violations of the sign code (Chapter [22B.10](#) BCC) or violations constituting a noise disturbance as set forth in BCC [9.18.040](#)(A)(4) or (5), the hearing examiner may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations, the hearing examiner shall consider the factors set forth in BCC [1.18.050](#)(D)(3)(b).

b. Sign Code Violations (Chapter [22B.10](#) BCC). The hearing examiner shall successively double the per sign monetary penalty assessed for each repeat violation.

c. Violations Constituting a Noise Disturbance as Set Forth in BCC [9.18.040](#)(A)(4) and (5). The hearing examiner shall successively double the monetary penalty assessed for each repeat violation. Upon the hearing examiner's finding that a second consecutive repeat violation has occurred, the hearing examiner shall prohibit the issuance of sound amplification permits allowing the operation of amplified sound equipment at the same location or on the same property as the repeat violations occurred for a period of two years from the date of the second consecutive repeat violation.

F. Continued Duty to Correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

City of Kenmore Municipal Code:

1.20.200 Monetary penalty.

A. Monetary Penalty. Each *violation* of a *City* regulation deemed committed by the *hearing examiner* is subject to a monetary penalty in an amount up to \$500.00 unless a different penalty amount for a given *violation* is expressly authorized or required by a more specific *City* code provision. Except where the *person responsible for the violation* has requested mitigation of the monetary penalty pursuant to KMC [1.20.120](#), the *hearing examiner* shall have no authority to reduce the amount of the monetary penalty.

Where the person has requested to mitigate the monetary penalty, the examiner may reduce the monetary penalty for each *violation*, but in no case shall the penalty be reduced to an amount less than \$100.00 for each *violation* found committed.

B. Payment of Monetary Penalty. Any monetary penalties assessed pursuant to this chapter constitute a personal obligation of the person to whom the *notice of civil violation* is directed. In addition, the monetary penalties assessed pursuant to this chapter may be assessed against the property that is the subject of the enforcement action. Any monetary penalty assessed must be paid in full to the *City* within 30 days from the date of service of an uncontested notice of *violation* or any order of the *hearing examiner* that assesses monetary penalties.

C. Collection of Monetary Penalty – Use of Collection Agency. The *City* is authorized to take legal action to collect the monetary penalty. Pursuant to Chapter 19.16 RCW, as currently enacted or hereafter amended, the *City* may, at its discretion, use a collection agency for the purposes of collecting penalties and costs assessed pursuant to this chapter. The collection agency may add fees or interest charges to the original amount assigned to collections as allowed by law. No debt may be assigned to a collection agency until at least 30 calendar days have elapsed from the time that the *City* attempts to notify the *person* responsible for the debt of the existence of the debt and that the debt may be assigned to a collection agency for collection if the debt is not paid. Notice of potential assignment to collections shall be sent by mail in accordance with KMC [1.20.060](#)(B)(2) to the *person responsible for the violation*; provided, inability to ascertain a current mailing address shall not prohibit the debt from being assigned to collections. Collection of monetary penalties is to be at parity with City or county taxes.

D. Continuing Duty to *Abate Violations*. Payment of a monetary penalty pursuant to this chapter does not relieve the *person responsible for the violation* of the duty to correct or abate the *violation*. Additional *notices of violation* may be issued and/or criminal charges filed for continuing failure to correct or *abate* a *violation*. [Ord. 11-0328 § 2.]

King County Code:

23.32 CIVIL FINES AND CIVIL PENALTIES

23.32.010 Assessment schedule.

A.1. Civil fines and civil penalties for civil code violations shall be imposed for remedial purposes and shall be assessed for each violation identified in a citation, notice and order, voluntary compliance agreement or stop work order pursuant to the following schedule:

a. citations

(1) With no previous similar code violations \$100

(2) With one or more previous similar code violations \$500

(3) With two or more previous violations of K.C.C. Title 10 Double the rate of the previous penalty

b. violation of notice and orders and stop work orders

(1) Stop work order basic penalty \$500

(2) Voluntary compliance agreement and notice and order basic penalty \$25

(3) Additional initial penalties may be added in the following amounts for violations where there is:

(a) public health risk \$15

(b) environmental damage risk \$15

(c) damage to property risk \$15

(d) one previous similar code violation \$25

(e) two previous similar code violations \$50

(f) three or more previous similar code violations \$75

(g) economic benefit to person responsible for violation \$25

c. cleanup restitution payment - as specified in K.C.C. 23.02.140.

d. reinspection following the issuance of a notice and order, if the violation has not been abated in accordance with the notice and order:

(1) first reinspection, which shall occur no sooner than the day following the date compliance is required by the notice and order \$150

(2) second reinspection, which shall occur no sooner than fourteen days following the first reinspection \$300

(3) third reinspection, which shall occur no sooner than fourteen days following the second reinspection \$450

(4) reinspection after the third reinspection, which shall only be conducted immediately preceding an administrative or court ordered abatement or at the direction of the prosecuting attorney for the purpose of presenting evidence in the course of litigation or administrative hearing against the person responsible for code compliance \$450

2. For the purposes of this section, previous similar code violations that can serve as a basis for a higher level of civil penalties include violations of the same chapter of the King County Code. Any citation, stop work order or notice and order previously issued by the department shall not constitute a previous code violation for the purposes of this section if that stop work order or notice and order was appealed and subsequently reversed.

B. The penalties assessed pursuant to this section for any failure to comply with a notice and order or voluntary compliance agreement shall be assessed daily, according to the schedule in subsection A of this section, for the first thirty days following the date the notice and order or voluntary compliance agreement required the code violations to have been cured. If after thirty days the person responsible for code compliance has failed to satisfy the notice and order or voluntary compliance agreement, penalties shall be assessed daily at a rate of double the rate for the first thirty days. Penalties may be assessed daily until the person responsible for code compliance has fully complied with the notice and order.

C. Penalties based on violation of a stop work order shall be assessed, according to the schedule in subsection A of this section, for each day the department determines that work or activity was done in violation of the stop work order.

- D. Citations and cleanup restitution payments shall only be subject to a one-time civil penalty.
- E. The director may suspend the imposition of additional civil penalties if the person responsible for code compliance has entered into a voluntary compliance agreement. If the person responsible for code compliance enters into a voluntary compliance agreement and cures the code violations, the director may also waive all or part of the accrued civil penalties in accordance with K.C.C. 23.32.050. Penalties shall begin to accrue again pursuant to the terms of the voluntary compliance agreement if any necessary permits applied for are denied, canceled or not pursued, or if corrective action identified in the voluntary compliance agreement is not completed as specified.
- F. The civil penalties in this section are in addition to, and not in lieu of, any penalties, sanctions, restitution or fines provided for in any other provisions of law. (Ord. 16278 § 22, 2008: Ord. 14309 § 6, 2002: Ord. 13263 § 37, 1998).

Snohomish County Code

30.85.170 Monetary penalties for notice of violation.

(1) Table 30.85.170 shall be used to determine the monetary penalties assessed for each violation identified in the notice of violation:

Table 30.85.170

Monetary Penalties for Notices of Violation

Type of Violation	Non-commercial violations ¹		Commercial violations
Day 1 to Day 20	\$500	Day 1 to Day 14	\$1,500
Day 21 to Day 40	Add \$1,500 (=\$2,000)	Day 15 to Day 29	Add \$1,500 (=\$3,000)
Day 41 to Day 60	Add \$2,000 (=\$4,000)	Day 30 to Day 44	Add \$3,000 (=\$6,000)
Day 61 to Day 80	Add \$2,500 (=\$6,500)	Day 45 to Day 59	Add \$5,000 (=\$11,000)
Day 81 to Day 100	Add \$3,500 (=\$10,000)	Day 60 to Day 74	Add \$6,000 (=\$17,000)
		Day 75	Add \$8,000 (=\$25,000)

¹ See SCC [30.85.135](#) definition.

(2) Monetary penalties for both noncommercial and commercial notice of violations shall be assessed and accrue from the compliance date in the notice of violation or its written extension.

- (3) Monetary penalties for repeat violations shall be assessed and accrue from the date of issuance of the notice of violation.
- (4) If a notice of violation is stayed pending an appeal, the monetary penalties will accrue as of the date of the decision of the hearing examiner (adjusted for the time stayed pending the appeal), or the compliance date of compliance if the date of compliance hasn't passed prior to the decision of the hearing examiner.
- (5) The total monetary penalties for noncommercial violations shall not exceed \$10,000 per violation, except as provided for in subsection (7) of this section.
- (6) The total monetary penalties for commercial violations shall not exceed \$25,000 per each violation, except as provided for in subsections (7)(a) and (b) of this section.
- (7) The following violations shall be subject to enhanced monetary penalties:
- (a) Violations that occur in a critical area or a critical area buffer as defined in chapters [30.62A](#), [30.62B](#), [30.62C](#) and [30.65](#) SCC shall be subject to triple monetary penalties; and
 - (b) Repeat violations in accordance with SCC [30.85.280](#) shall be subject to double monetary penalties.

(Added by Amended Ord. [08-062](#), Oct. 1, 2008, Eff date Nov. 1, 2008; Amended by Amended Ord. [13-042](#), July 10, 2013, Eff date July 22, 2013)

30.85.180 Reduction of monetary penalties.

- (1) The director may reduce monetary penalties assessed in SCC [30.85.170](#) if the violation is corrected and the correction is verified by the department.
- (2) For reduction of monetary penalties, the person(s) named in the notice of violation shall have the burden of proof that the violation has been corrected and the date of correction, including verification by the department.
- (3) Monetary penalties shall not be reduced in the case of a repeat violator or repeat violation as defined in SCC [30.85.280](#).
- (4) The director may base the decision to reduce a monetary penalty on an evaluation of individual circumstances, including, but not limited to, the severity of the violation, the public interest being protected, and

the cooperation of the person responsible for the violation. The person(s) named in the notice of violation must submit a written request for reduction of monetary penalties that includes an explanation of the circumstances surrounding the commission of the violation and acts taken to correct the violation. Such requests should include the code enforcement case number and be addressed to the department's code enforcement division.

(5) Nothing in this section shall obligate the director to reduce any monetary penalties.

(Added by Amended Ord. [08-062](#), Oct. 1, 2008, Eff date Nov. 1, 2008; Amended by Amended Ord. [12-018](#), May 2, 2012, Eff date May 21, 2012)

ORDINANCE O-4451

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CODE ENFORCEMENT AND AMENDING CERTAIN SECTIONS OF CHAPTER 1.12 OF THE KIRKLAND MUNICIPAL CODE, FILE NO. CAM14-00868.

WHEREAS, the City of Kirkland ("City") adopted Ordinance No. 4280 in 2011 consolidating various code enforcement processes into a single enforcement chapter in Chapter 1.12 of the Kirkland Municipal Code ("KMC"); and

WHEREAS, the City has used the process for three years and seeks to clarify how monetary penalties and tree fines are assessed, add an upper limit on monetary penalties, and add incentives to come into compliance with the City codes;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. KMC Section 1.12.020 is amended to read as follows:

1.12.020 Definitions.

As used in this chapter, unless a different meaning is plainly required:

(a) "Abate" means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner and to such an extent as the applicable department director determines is necessary in the interest of the general health, safety and welfare of the community.

(b) "Act" means doing or performing something.

(c) "Applicable department director" means the director of the department or his or her designee.

(d) "Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation. Traffic infractions issued pursuant to Title 11 are specifically excluded from the application of this chapter.

(e) "Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts governed by a city regulation.

(f) "Emergency" means a situation which in the opinion of the applicable department director requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.

(g) "Hearing examiner" means the Kirkland hearing examiner and the office thereof established pursuant to Chapter 3.34.

(h) "Omission" means a failure to act.

(i) "Person" means any individual, firm, association, partnership, corporation or any entity, public or private.

(j) "Person responsible for the violation" means any person who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the city, and includes but is not limited to owner(s), lessor(s), tenant(s), or other person(s) entitled to control, use and/or occupy property where a civil violation occurs. For violations of the city sign regulations, this definition includes, but is not limited to, sign installers/posters, sign owners, and any other persons who cause or participate in the placement of a sign in a manner that constitutes a civil violation. For violations of city tree regulations, this definition includes any person who caused or participated in the removal of a tree in a manner that constitutes a civil violation.

(k) "Regulation" means and includes the following, as they now exist or are hereafter amended:

- (1) Title 23 (Kirkland Zoning Code);
- (2) Title 21, Buildings and Construction (including codes adopted by reference);
- (3) Chapter 15.52 (Surface Water Management);
- (4) Title 29 (Land Surface Modification);
- (5) Chapter 19.04 (Obstructing Streets or Sidewalks);
- (6) Chapter 11.76 (Junk Vehicles);
- (7) Chapter 11.24 (Nuisances);
- (8) The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city;
- (9) Chapter 7.74 (Fair Housing Regulations);
- (10) Chapter 16.08 (Garbage Disposal).

(l) "Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two years or a notice of civil violation has been issued within two years.

(m) "Violation" means an act or omission contrary to a city development regulation including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission.

Section 2. KMC Section 1.12.040 is amended to read as follows:

1.12.040 Notice of civil violation

(a) Issuance.

(1) When the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction pursuant to Section 1.12.030, the applicable department director may issue a notice of civil violation to the person responsible for the violation.

(2) The applicable department director may issue a notice of civil violation without having attempted to secure voluntary correction as provided in Section 1.12.030 under the following circumstances:

(A) When an emergency exists;

(B) When a repeat violation occurs;

(C) When the violation creates a situation or condition which cannot be corrected;

(D) When the person knows or reasonably should have known that the action is in violation of a city regulation.

(b) Content. The notice of civil violation shall include the following:

(1) The name and address of the person responsible for that violation; and

(2) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

(3) A description of the violation and a reference to the provision(s) of the city regulation which has been violated; and

(4) The required corrective action and a date and time by which the correction must be completed, after which the city may abate the unlawful condition in accordance with Section 1.12.060 and the hearing examiner's order; and

(5) The date, time and location of a hearing before the hearing examiner, which will be at least ten days from the date the notice of civil violation is issued; and

(6) A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed, required corrective action at least forty-eight hours prior to the hearing, except that this statement need not be included where the violation constitutes a repeat violation or the violation creates a situation or condition which cannot be corrected; and

(7) A statement that the costs and expenses of abatement incurred by the city pursuant to Section 1.12.060 and a monetary penalty in an amount per day for each violation as specified in subsection (e) of this section may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the hearing examiner.

(c) Service of Notice. The applicable department director shall serve the notice of civil violation upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil violation to such person at their last known address. If the person to whom it is directed cannot after due diligence be personally served within King County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person personally or by mail.

(d) Extension. No extension of the time specified in the notice of civil violation for correction of the violation may be granted, except by order of the hearing examiner.

(e) Monetary Penalty Schedule. ~~The amount of the monetary penalty per day or portion thereof for each violation is as follows:~~

(1) Amount

(A) The penalty for first-time violations is one hundred dollars per day for each violation;

~~(1) First violation: one hundred dollars;~~

(B) The per-day penalty for repeat violations shall be double the previous per-day penalty amount. For example, the per-day penalty for second-time violations is two hundred dollars, and the per-day penalty for third-time violations is four hundred dollars.

~~(2) Second violation: two hundred dollars; (3) Third violation: three hundred dollars; (4) Additional violation in excess of three: five hundred dollars.~~

(2) Limit: The total monetary penalties for each violation shall not exceed \$10,000 per violation, except as provided for in 1.12.050(d)(3) and (4).

~~(2) The hearing examiner may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations, the hearing examiner shall consider the factors set forth in Section 1.12.050(d) (4).~~

(f) Continued Duty to Correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

(g) Collection of Monetary Penalty.

(1) The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the city ~~within ten calendar days from the date of mailing of the hearing examiner's decision or~~ as stated in the a notice from the city that penalties are due as established in the hearing examiner's decision.

(2) The city attorney or his/her designee is authorized to take appropriate action to collect the monetary penalty. The city may contract with a collection agency for this purpose.

Section 3. KMC Section 1.12.050 is amended to read as follows:

1.12.050 Hearing before the hearing examiner.

(a) Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the hearing examiner not less than ten calendar days after the notice of civil violation is issued.

(b) Prior Correction of Violation or Payment of Monetary Penalty. Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed required corrective action at least forty-eight hours prior to the scheduled hearing.

(c) Procedure. The hearing examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the hearing examiner. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The city shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the applicable department director as to the need for the required corrective action

shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.

(d) Decision of the Hearing Examiner.

(1) The hearing examiner shall determine whether the city has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the city's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

(2) The hearing examiner shall issue an order to the person responsible for the violation which contains the following information:

(A) The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

(B) The required corrective action;

(C) The date and time by which the correction must be completed;

(D) The monetary penalties assessed based on the criteria in subsection (d)(3) of this section;

(E) The date and time after which the city may proceed with abatement of the unlawful condition if the required correction is not completed.

(3) Assessment of Monetary Penalty. ~~Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in Section 1.12.040.~~ The hearing examiner shall have the following options in assessing monetary penalties:

(A) Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or

(B) Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the hearing examiner and thereafter; ~~or~~

~~(C) Assess no monetary penalties.~~

(4) Determining Monetary Penalty. Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in Section 1.12.040, provided that the hearing examiner may assess no monetary penalties or may assess up to double the monetary penalty schedule. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:

(A) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;

- (B) Whether the person ~~failed to appear~~appeared at the hearing;
- (C) Whether the violation was a repeat violation;
- (D) Whether the person showed due diligence and/or substantial progress in correcting the violation;
- (E) Whether a genuine code interpretation issue exists; and
- (F) Any other relevant factors.

~~(5) Effect of Repeat Violations. The hearing examiner shall assess a monetary penalty for each repeat violation as set forth in Section 1.12.040.~~

~~(6) Notice of Decision. The hearing examiner shall mail a copy of the decision to the person responsible for the violation and to the applicable department director within ten working days of the hearing.~~

(e) Failure to Appear. If the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the examiner will enter an order finding that the violation occurred and assess the appropriate monetary penalty. The city will carry out the hearing examiner's order and recover all related expenses plus the cost of the hearing and any monetary penalty from that person.

(f) Appeal to Superior Court. An appeal of the decision of the hearing examiner must be filed with superior court within twenty-one calendar days from the date the hearing examiner's decision was mailed to the person to whom the notice of civil violation was directed, or is thereafter barred.

Section 4. A new KMC Section 1.12.055 is adopted to read as follows:

1.12.055 Reduction of monetary penalties.

(a) The applicable department director may reduce monetary penalties assessed in KMC 1.12.050 if the violation is corrected and the correction is verified by the department.

(b) For reduction of monetary penalties, the person responsible for the violation shall have the burden of proof that the violation has been corrected. The person must inform the department of the date of correction and request verification by the department.

(c) The applicable department director may base the decision to reduce a monetary penalty on an evaluation of individual circumstances, including but not limited to, the severity of the violation, the impact to neighbors, the duration of the violation, the cost to the City, the public interest being protected, and the cooperation of the person responsible

for the violation. The person responsible for the violation must submit a written request for reduction of monetary penalties that includes an explanation of the circumstances surrounding the commission of the violation and acts taken to correct the violation.

(d) Nothing in this section shall obligate the director to reduce any monetary penalties.

Section 5. A new KMC Section 1.12.057 is adopted to read as follows:

1.12.057 Certificate of noncompliance.

(a) If a property remains out of compliance after a Hearing Examiner decision verifying the violation, the applicable department director may record a certificate of noncompliance.

(b) The certificate of noncompliance is a notice recorded on the title of real property. The purpose of the certificate is to give notice to interested parties of outstanding code violations.

(c) The certificate of noncompliance must include a statement of how it can be removed from the title of the property when the violation(s) have been corrected.

Section 6. KMC Section 1.12.070 is amended to read as follows:

1.12.070 Stop work orders and orders to cease and desist.

(a) Issuance of Order. Whenever the applicable department director finds any activity is being conducted or work being performed without a permit or in a manner contrary either to the provisions of the Kirkland Zoning Code or Kirkland Municipal Code, including any of the technical codes adopted by reference in Title 21, the applicable department director is authorized to issue a stop work order or order to cease and desist. The order shall be in writing and shall be given to the owner or occupant of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order or order to cease and desist, the cited work or activity shall immediately cease. The order shall state the reason for the order, and the conditions under which the cited work or activity will be permitted to resume.

(b) Fees and Penalties. The applicable department director is authorized to assess a special investigation fee for the issuance of a stop work order or order to cease and desist based on the costs to the city of investigation and enforcement of the order. Any person who shall continue any work or activity on the property after having been served with a stop work order or order to cease and desist (except such work as that person is directed to perform to remove a violation or unsafe condition) shall be subject to penalties as provided under this chapter

and as otherwise prescribed by law. ~~A stop work order or order to cease activity may be appealed in the same manner and pursuant to the same provisions as a notice of civil violation under this chapter.~~

Section 7. KMC Section 1.12.100 is amended to read as follows:

1.12.100 Special provisions relating to enforcement of tree regulations.

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

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

~~(c) Cease and Desist. The applicable department director may issue a notice to cease and desist using the procedure set forth in this chapter if he or she finds that a violation of this code has occurred. Continued illegal tree activity following issuance of a cease and desist from the city for the tree activity shall result in fines of one thousand dollars per day of continued activity.~~

~~(d) Stop Work Order. If a violation of Chapter 95 of the Kirkland Zoning Code or an approved tree retention plan occurs on property on which work is taking place pursuant to a city of Kirkland development or building permit, the building official may suspend some or all of the work as appropriate through issuance of a stop work order. The building official shall remove the stop work order when the city determines that the violation has been corrected or when the city has reached an agreement with the violator regarding rectification of the violation. Any stop work order issued under this section may be appealed using the procedures set forth in this chapter.~~

~~(e)~~ Civil Penalty for Violations of the Tree Code Fines for tree removal

~~(1) A person who fails to comply with the requirements of Kirkland Zoning Code Chapter 95 or the terms of a permit issued thereunder, who undertakes an activity regulated by this chapter without obtaining a permit, or who fails to comply with a cease and desist or stop work order issued under this chapter shall also be subject to a civil penalty as set forth in the following table. Each unlawfully removed or damaged tree shall constitute a separate violation.~~

~~(2) Any person who aids or abets in the violation shall be considered to have committed a violation for purposes of finethe civil penalty.~~

(3) ~~The amount of the penalty~~ Fines shall be assessed in accordance with Table 1.12.100. Fines are due according to the Corrective Action described in the Notice of Tree Fines and Restoration Due. The applicable department director may elect not to seek ~~penalties-fines~~ if he or she determines that the circumstances do not warrant imposition of ~~civil penalties~~ 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

(fd) Tree Restoration.

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

trees in similar growing conditions. The amount of costs above the approved restoration plan will be paid into the city forestry account.

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

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

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

(C) In the event the violators cannot restore the unlawfully removed or damaged trees, the violators shall make payment to the city forestry account. Unless otherwise determined to base the restoration costs on appraised value, the amount paid will be the city's unit cost for a restoration tree multiplied by the number of outstanding tree credits. The city's unit cost is based on the current market cost of purchase, installation and three-year maintenance for a minimum-sized tree for restoration.

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

~~g~~ Failure to Restore or Pay Fines.

The city may issue a Notice of Civil Violation to the person(s) who fail to restore or pay fines according to the procedures set forth in this chapter.

~~(1) Prohibition of Further Approvals. The city shall not approve any application for a subdivision or any other development permit or approval or issue a certificate of occupancy for property on which a violation of this chapter has occurred until the violation is cured by restoration or other means accepted by the applicable department director and by payment of any penalty imposed for the violation.~~

~~(2) Fines. A property owner or occupant who fails to restore or otherwise cure property on which a violation of this chapter has occurred shall be assessed a fine of one hundred dollars per day for each day that~~

~~restoration is incomplete. Prior to assessing fines under this subsection, the city shall issue a written notice to the property owner or occupant that restoration has not been completed. The notice shall include the following information: (A) a description of the nature of the violation; (B) a description of what actions are required to bring the property into compliance; and (C) a date by which compliance shall be required (the "compliance date"). The compliance date shall be no less than thirty days from the date the notice is served on the property owner or occupant. If the property owner or occupant does not, in the determination of the city, bring the property into compliance by the compliance date, then the city may issue an order imposing one-hundred dollar per day fines at any time after the compliance date.~~

Section 8. 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 9. This ordinance shall be in full force and effect five days from and after its passage by the Kirkland City Council and publication, pursuant to Kirkland Municipal Code 1.08.017, in summary form attach to the original of this ordinance and by this reference approved by the City Council as required by law.

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-4451

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CODE ENFORCEMENT AND AMENDING CERTAIN SECTIONS OF CHAPTER 1.12 OF THE KIRKLAND MUNICIPAL CODE, FILE NO. CAM14-00868 .

SECTION 1. Amends KMC Section 1.12.020 relating to definitions.

SECTION 2. Amends KMC Section 1.12.040 relating to notices of violation.

SECTION 3. Amends KMC Section 1.12.050 relating to hearings before the hearing examiner.

SECTION 4. Adds a new KMC Section 1.12.055 relating to reduction of monetary penalties.

SECTION 5. Adds a new KMC Section 1.12.057 relating to certificates of noncompliance.

SECTION 6. Amends KMC Section 1.12.070 relating to stop work orders and orders to cease and desist.

SECTION 7. Amends KMC Section 1.12.100 relating to enforcement of tree regulations.

SECTION 8. Provides a severability clause for the ordinance.

SECTION 9. 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