



CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Stacey Rush, Surface Water Utility Engineer
Jenny Gaus, Environmental Services Supervisor
Daryl Grigsby, Public Works Director

Date: July 9, 2009

Subject: Water Quality Ordinance for NPDES Phase II Stormwater Permit Compliance

RECOMMENDATION:

It is recommended that Council adopt the attached ordinance relating to storm and surface water management and water quality, Kirkland Municipal Code (KMC) Title 15, Water and Sewage.

POLICY IMPLICATIONS:

- This ordinance presents minor changes to existing water quality code that has been in place since 1999.
- This ordinance addresses spills and dumping, actions that have significant negative impacts on our water resources. For example, dumping ¼ cup of oil can produce an oil slick of an acre in size on a lake. Such nonpoint pollution is now known to be the chief cause of decline in the health of Puget Sound (75% of pollution entering Puget Sound comes from stormwater runoff).
- Current City water quality enforcement practices, chiefly the extensive use of education in order to resolve water quality problems, will continue unchanged. Fines have only been levied in one case in the 10 years that the current code has been in place, despite investigation and resolution of almost 1,000 complaints.
- Adoption of this ordinance by August 16, 2009 will allow continued city compliance with the NPDES Phase II Municipal Stormwater Permit.
- This ordinance does *not* address storm water requirements for development projects – these will be addressed in an ordinance that will be presented to Council this fall, and that must be in place by February of 2010 in order to maintain compliance with the NPDES Phase II Municipal Stormwater Permit.
- This ordinance includes some administrative and housekeeping code changes for clarification purposes and maintaining compliance with State laws not associated with NPDES

BACKGROUND DISCUSSION:

Introduction

Kirkland, through creation of the Surface Water Utility in 1998, has been improving water quality and preparing for the requirements of the NPDES Phase II Municipal Stormwater Permit for over 10 years. As a result of the foresight of the Council, and through this work, the city is already complying with most of the requirements of the permit, even though permit deadlines for some items are still in the future. The ordinance presented to you today is typical of

changes that the City will need to make in order to be in full compliance with the permit; it makes minor language changes to insure that Kirkland meets the letter of the law, given that Kirkland is already meeting the intent of the law. Staff has also taken this opportunity to include some administrative and housekeeping measures in the ordinance in order to improve clarity and to maintain compliance with State laws not associated with NPDES.

Proposed Water Quality Ordinance

A. Overview

Kirkland has had municipal code in place since 1999 that prohibits illegal discharges and dumping (Attachment A: KMC 15.52). The following changes to the existing code meet specific requirements under NPDES, and will keep the City in compliance with the Phase II NPDES Permit:

- Some surface water definitions have been removed from the KMC to avoid the potential for having conflicting definitions between the KMC and the Ecology's Stormwater Management Manual for Western Washington (Ecology Manual).
- Text has been added to clarify discharges that are allowed, and those that are allowed when certain conditions are met (Phase II NPDES permit requirement).
- The source-control and pollution prevention portion of the Ecology Manual for Western WA is adopted. This manual provides guidance on measures that business and property owners can take to prevent storm water pollution.

In addition, the following housekeeping/administrative changes are included to improve clarity and to maintain compliance with State laws not associated with NPDES:

- A penalty amount of \$100 per day is added. There are hanging references to monetary penalties in the existing code, but the actual amount of the penalty was inadvertently left out when the code was revised in 1999. This does not represent a change to the enforcement process, but rather only clarifies the existing process.
- Additional text in KMC 15.56.010 to clarify the stormwater utility service rate is zero if the site does not contain any impervious surface.
- A new code has been added, KMC 15.56.060 Qualified Rainwater Harvesting Discount. This code is required for compliance with RCW 35.67.020(3) which went into effect in 2003.

B. Specific Changes to Allowed and Prohibited Discharges

Lists of allowed, prohibited, and conditional discharges have been added to KMC 15.52.090. These lists are taken directly from the Phase II NPDES permit language, and adoption is required for permit compliance. The lists are not entirely new; similar lists are currently in the Public Works Pre-Approved Plans (Attachment B, Policy D-4), and this ordinance shifts them into the KMC. While most items in the lists remain the same, below are changes required by NPDES:

- Flammable or explosive materials, silt, sediment, concrete, cement, gravel, and other process-associated discharges (like industrial) have been added to the "prohibited" list under NPDES. These contaminants can be harmful to the public and the environment and therefore are not allowed in the public stormwater drainage system.
- Potable water discharge was previously an "allowable discharge". Under NPDES, it is a "conditional discharge" that should be minimized. Minimizing techniques include de-chlorinating and controlling the volumes of planned discharges (like water line flushing) to prevent erosion or re-suspension of sediments in the public stormwater drainage system.
- Lawn watering was previously an "allowable discharge". Under NPDES it is a "conditional discharge" that is permitted, but should be minimized through public education and water conservation efforts. The City currently provides education and outreach on water conservation and natural yard care techniques including "smart watering".

- De-chlorinated swimming pool water was previously an “allowable discharge”. Under NPDES it is a “conditional discharge” that should be de-chlorinated to a concentration of 0.1 ppm or less, pH adjusted, and the volumes controlled to prevent erosion or re-suspension of sediments in the public stormwater drainage system.
- Street and sidewalk wash water, water used to control dust, and routine external building wash down was previously an “allowable discharge” provided no detergents were used. Under NPDES these are “conditional discharges” that should be minimized, and sweeping should be performed prior to washing sidewalks and streets to limit the amount of pollution washed into the storm system.

C. Housekeeping and Administrative Changes

This collection of items clarifies existing code, and makes changes required by non-NPDES changes in State law. These changes were not brought separately to Council, because it would be inefficient to make such small alterations individually.

Currently City Code does not specifically state that the surface water fee for a parcel containing no impervious surface is zero. This clarification is needed because there has been confusion regarding whether a “vacant parcel” means a parcel with an unoccupied house or an undeveloped parcel that does not contain impervious surface.

The existing enforcement process adopted in KMC 15.52.140 was adopted in 1999. The only change proposed at this time is to state the actual dollar amounts for monetary penalties. The existing code references a monetary penalty, but a dollar amount was inadvertently left out. The following monetary penalties listed below are proposed, and are consistent with monetary penalties existing in the Kirkland Zoning Code:

- First violation is \$100
- Second violation is \$200
- Third violation is \$300
- Additional violation in excess of three is \$500
- Monetary penalties apply for each violation, and for each and every day the violation continues.

Although the escalating enforcement process is important, we almost never use it because every effort is made to achieve compliance through education and technical assistance – through talking with people. Please see the discussion of enforcement policy below.

A new code has been added, KMC 15.56.060 Qualified Rainwater Harvesting Discount. This code is necessary for compliance with RCW 35.67.020(3) which went into effect in 2003. The RCW provides guidance to jurisdictions regarding stormwater utility rates, and the specific rainwater harvesting discount item was sponsored by the House Committee on Agriculture & Natural Resources (in ESHB 2088). Rainwater harvesting has not been used often in development in Kirkland, but the technique may be used more often in the future with the increasing trend in low impact development.

Background on Water Quality Enforcement Policy and Procedure

Kirkland’s approach to enforcement regarding water quality matters has been, and will continue to be, the use of education as a first approach. In the 10 years the current code has been in place, there has only been one instance of levying a monetary penalty for a water quality violation; and it was imposed against a resident who modified a permanent water quality treatment facility after being told by staff the modification was not allowed. The monetary penalty helped to ensure the facility would be restored to treat runoff from a public street. Issuance of a monetary penalty is considered a “last resort” by staff because of the staff time involved with the legal process, and because our city policy is compliance through education

first. Fines and penalties for water quality violations do not produce revenue for the City; they end up costing the City more to enforce than is recouped through the monetary penalty.

City staff investigates and resolves an average of 100 water quality complaints per year, without levying any monetary penalties. The process starts with an initial investigation of the complaint, and if a violation is found then staff will discuss the violation with the property owner or responsible party. In most cases, this education effort is enough to obtain compliance. If not, a notice of violation is given to the property owner/responsible party. The notice of violation typically asks the property owner to perform a specific action (or cease and desist) within a specific time frame. Every attempt is made by staff to assist the property owner/responsible party with compliance. Only when the violation persists after the specified time frame is a notice of civil infraction issued, which can contain the monetary penalty. As stated previously, the issuance of a monetary penalty has only occurred once in the past 10 years.

This work has produced important results. Water quality on local streams has improved because chronic and one-time discharges have been cleaned up and/or removed. Recent examples of water quality investigation and enforcement work include:

- Re-routing of a private sanitary sewer pipe leaking into the public storm drainage system
- Working with a car dealership to route runoff from engine pressure washing to sanitary sewer instead of the public storm drainage system

NPDES Background Information

The intent of the NPDES permit program is to reduce the discharge of pollutants to our Nation's waterways, thus promoting the "beneficial uses" of those waters such as fishing, swimming, and withdrawal of drinking water. The permit program began with a focus on industry – "point sources" that could be easily identified, such as the pipe outfall from a factory. These have been largely addressed and controlled, but there is still a large and ever-increasing water quality problem in our national waters. This problem has been tied to "non-point" sources of pollution, which is commonly known as polluted runoff. Non-point pollution is tied to local land uses and individual actions. Non-point pollution comes from everyday activities such as improperly operating septic systems, car-washing, and home maintenance, and from pollutants carried into waterways by stormwater runoff. Although runoff from individual activities may seem inconsequential, when taken as a whole this adds up to a big problem. Recent research has shown that storm water pollution is the biggest source (estimated at 75%) of water quality degradation in Puget Sound.

The Washington State Department of Ecology issued the Western WA Phase II Municipal Stormwater Permit (Phase II NPDES Permit) on February 16, 2007. The City of Kirkland must seek coverage under the Phase II NPDES Permit or face third-party lawsuits, fines, or other penalties under the Federal Clean Water Act. The Phase II NPDES Permit requires jurisdictions to comply with the conditions of the permit which include actions in each of the following 5 areas:

- Public education and outreach
- Public involvement and participation
- Illicit discharge detection and elimination
- Controlling Runoff from New Development, Redevelopment, and Construction Sites
- Pollution Prevention and Operation and Maintenance for Municipal Operations

The Phase II NPDES Permit was appealed by both cities/counties and environmental groups. The Pollution Control Hearing Board (PCHB) appeal process took place between 2007 and early 2009. Cities raised a variety of issues concerning the cost, feasibility and timeframe for permit compliance, but the PCHB ruled essentially that the permit struck a good balance between the environmental concerns (i.e. claims that the permit require enough measures in a short enough timeframe) and cost/feasibility concerns. The appeals did result in some permit modifications issued on June 17, 2009, but the compliance date for the illicit discharge ordinance requirements (which are presented in the attached ordinance) was not modified and the deadline remains as August 16, 2009.

The next opportunities for input on the content and timeframe of the Phase II NPDES Permit will be either to present items to the State legislature for consideration in 2010, or to provide input and comment if/when the permit is revised in advance of the next permit cycle. The current permit expires in February 2012, and Ecology has not yet indicated whether the permit will be revised in time for re-issuance by that time. If Ecology does not revise the permit, the current permit will be re-issued for an additional 5-year period.

Responses to Specific Questions from Council and Citizens

The following are responses to questions posed by council and the public that have not otherwise been answered in this memo.

1) *Why are changes to the surface water management KMC necessary now?*

Ordinance changes are required for compliance with the Western WA Phase II Municipal Stormwater Permit (Phase II NPDES Permit), issued by the Washington State Department of Ecology. The ordinance changes must be adopted and implemented by August 16, 2009.

The Phase II NPDES Permit process has been ongoing for several years (see attachment C, permit timeline). The draft permit was available in the fall of 2006, and the actual permit became effective in February 2007. There are separate completion dates for elements in the permit. Municipalities were given 30 months to comply with the illicit discharge elements, and that time expires on August 16, 2009.

2) *What is the definition of illicit discharge?*

As is said in many stormwater education pieces "Only Rain Down the Drain." An illicit discharge is defined by Washington State Department of Ecology as all non-stormwater discharges to stormwater drainage systems that cause or contribute to a violation of state water quality, sediment quality or ground water quality standards, including but not limited to sanitary sewer connections, industrial process water, interior floor drains, car washing, and greywater systems. That said, the first response to any illicit discharge is education and discussion rather than fines or criminal penalties. See discussion of the enforcement process earlier on page 3.

3) *Why are soaps and detergents on the "prohibited" discharge list?*

Soaps and detergents have been a prohibited discharge since the KMC was last revised in 1999 because they are harmful to our lakes, streams, and wetlands. Even biodegradable soaps are toxic to fish and other aquatic life. For 10 years the city has provided ongoing public education and outreach on the detrimental effects of discharging car wash water into streets and the storm system; including loaning car wash kits for charities to use that route the wash water to sanitary sewer, and providing tickets for commercial car wash businesses (where the wash water is recycled). Kirkland's policy continues to emphasize education to residents, rather than involve other enforcement actions for residential car washing.

4) Do we require water quality treatment for streets in Kirkland?

There are currently over 1,000 facilities providing water quality treatment on existing public streets in Kirkland, and more are installed through development every year. Water quality treatment for street runoff is required for new and redevelopment projects that meet thresholds outlined in the 1998 King County Surface Water Design Manual (the current storm manual adopted for both private and public development projects in Kirkland). City staff attempt to include additional water quality treatment (above regulatory requirements) for streets in public projects, but it does increase the stormwater cost and the extra treatment cannot always be provided with the limited capital budgets available and the physical layout of existing storm water systems. Please see attachment D, Council memo dated February 25, 2009, which provides details regarding water quality treatment of Kirkland streets.

NEXT STEPS

On June 17th, Ecology modified our Phase II NPDES permit extending the mandatory adoption date for revised surface water development regulations from August 2009 until February 2010. Because of this change, staff will provide council with an ordinance for additional code revisions relating to development standards this fall to remain compliant with the Phase II NPDES permit.

Adoption of revised surface water development regulations will have significant impacts to the City and the development community, which is one reason the deadline was extended. While many of the development code changes are mandatory, some are more flexible. For example, municipalities have the option of extending the stricter development regulations to projects smaller than 1 acre in size. Ecology recommends extending the same requirements for smaller projects, but it is not a requirement of the phase II NPDES permit. While the stricter regulations may benefit our streams, lakes, and wetlands, there are also economic impacts that need to be considered. A decision matrix containing costs and benefits will be provided to Council in the fall to assist in this decision.

Attachment A: Existing Surface Water Management Code, KMC Chapter 15.52

Attachment B: Public Works pre-Approved Plans Policy D-4, Prohibited and Allowed Discharges to the Storm Drainage System

Attachment C: Timeline for NPDES Phase II Municipal Stormwater Permit

Attachment D: Council memo dated February 25, 2009, Water Quality Treatment for City Streets

Attachment E: Proposed ordinance relating to storm and surface water management and water quality.

Chapter 15.52 SURFACE WATER MANAGEMENT

Sections:

Article I. Surface Water Utility Purpose
and Responsibilities

- 15.52.010 Surface water utility created—Responsibilities.**
- 15.52.020 Purpose.**
- 15.52.030 Comprehensive drainage and storm sewer plan.**
- 15.52.040 Work contracted out.**

Article II. Requirements for
Development Activities

- 15.52.050 Applicability—Storm water plan required.**
- 15.52.060 Design and construction standards and requirements.**
- 15.52.070 City acceptance of new storm water facilities.**
- 15.52.080 Bonds and irrevocable license to enter.**

Article III. Water Quality and Flood Protection

- 15.52.090 Illicit discharges and connections.**
- 15.52.100 Source control best management practices.**
- 15.52.110 Water quality standards.**
- 15.52.120 Operation and maintenance of storm water facilities.**

Article IV. Inspection and Enforcement

- 15.52.130 Inspection and sampling.**
- 15.52.140 Enforcement, violations and penalties.**
- 15.52.150 Conflicts.**
- 15.52.160 Severability.**

Article I. Surface Water Utility Purpose
and Responsibilities

15.52.010 Surface water utility created—Responsibilities.

There is hereby created and established, pursuant to Chapters 35A.80 and 35.67 RCW, a storm and surface water utility to be known as the “Kirkland surface water utility.” All references to “the utility” in this chapter refer to the Kirkland surface water utility. The utility will have primary authority and responsibility for carrying out the city’s comprehensive drainage and storm sewer plan, including responsibilities for planning, design, construction, use, maintenance, inspection, administration, and operation of all city storm and

surface water facilities; establishing standards for design, construction, and maintenance of improvements on private property where these might affect storm and surface water management; and to establish programs and regulations to assure the quality of the water in such systems, to minimize the chance of flooding, and to provide for the enforcement of the provisions of this code. The director of public works shall be the administrator of the utility. The administrator of the utility shall formulate and propose to the city council for adoption by ordinance a system of rates and charges for services of the utility. To the extent required by law, rates charged shall be uniform for the same class of customers or services. (Ord. 3711 § 4 (part), 1999)

15.52.020 Purpose.

The city council finds that this chapter is necessary to promote sound development policies and construction procedures which respect and preserve the city's watercourses; to minimize water quality degradation and control of sedimentation of creeks, streams, ponds, lakes, and other water bodies; to protect the life, health, and property of the general public; to preserve and enhance the suitability of waters for contact recreation and fish habitat; to preserve and enhance the aesthetic quality of the waters; to maintain and protect valuable ground water quantities, locations, and flow patterns; to insure the safety of city roads and rights-of-way; and to decrease drainage-related damages to public and private property. (Ord. 3711 § 4 (part), 1999)

15.52.030 Comprehensive drainage and storm sewer plan.

A comprehensive drainage and storm sewer plan shall be developed by the city for review and adoption by the city council. Such a plan may include basin-specific or city-wide recommendations for regulations, procedures, and programs. Such regulations, procedures and programs may include but are not limited to capital projects, public education and enforcement activities, operation and maintenance of city storm and surface water facilities, and land use management regulations to be recommended for adoption by ordinance for managing surface and storm water management facilities. Once adopted by the city council, elements of the comprehensive drainage and storm sewer plan pertaining to new development and redevelopment projects shall be incorporated into the standard plans. (Ord. 3711 § 4 (part), 1999)

15.52.040 Work contracted out.

The director of public works may arrange to have work that would be done by the utility performed by a private party or contracted out when it is determined that it would be economically beneficial to do so. (Ord. 3711 § 4 (part), 1999)

Article II. Requirements for
Development Activities

15.52.050 Applicability—Storm water plan required.

All developers taking any of the following actions or applying for any of the following permits and/or approvals will be required to submit for approval a storm water plan with their application and/or request, unless exempted by the city engineer or his designee. The storm water plan shall include those items designated in the public works standard plans. Work on the site can only be allowed after approval of the storm water plan.

- (1) Creation or alteration of new or additional impervious surfaces;
- (2) New development;
- (3) Redevelopment;
- (4) Building permit;
- (5) Subdivision approval;
- (6) Short subdivision approval;
- (7) Commercial, industrial, or multifamily site plan approval;
- (8) Planned unit development;
- (9) Development within or adjacent to critical areas;
- (10) Rezones;
- (11) Conditional use permit;
- (12) Substantial development permit required under Chapter 90.58 RCW (Shoreline Management Act);
- (13) Land surface modification permit. (Ord. 3711 § 4 (part), 1999)

15.52.060 Design and construction standards and requirements.

(a) The standard plans as defined in Section [15.04.340](#) shall include requirements for temporary erosion control measures, storm water detention, water quality treatment and storm water conveyance facilities that must be provided by all new development and redevelopment projects. These standards shall meet or exceed the storm water control requirements of Stormwater Management in Washington State (Volumes 1 through 5), as presently written or hereafter amended, and as administered by the State Department of Ecology.

(b) Unless otherwise provided, it shall be the developer's and property owner's responsibility to design, construct, and maintain a system which complies with the standards and minimum requirements as set forth in the standard plans.

(c) In addition to providing storm water quality treatment facilities as required in this section and as outlined in the standard plans, the developer and/or property owner shall provide source control BMPs such as structures and/or a manual of practices designed to treat or prevent storm water pollution arising from specific activities expected to occur on the site. Examples of such specific activities include, but are not limited to, carwashing at multifamily residential sites and oil storage at auto repair businesses. Criteria for development and submittal of designs and plans for such BMPs are included in the standard plans.

(d) The city will inspect all permanent storm water facilities prior to final approval of the relevant permit. All facilities must be clean and fully operational before the city will grant final approval of the permit. A performance bond may not be used to obtain final approval of the permit prior to completing the storm water facilities required under this chapter.

(e) Exception (Adjustment) Process. Any developer proposing to adjust the requirements for, or alter design of, a system required as set forth in the standard plans must follow the adjustment process as set forth in the standard plans.

(f) Other Permits and Requirements. It is recognized that other city, county, state, and federal permits may be required for the proposed action. Further, compliance with the provisions of this chapter when developing and/or improving land may not constitute compliance with these other jurisdictions' requirements. To the extent required by law, these other requirements must be met. (Ord. 3711 § 4 (part), 1999)

15.52.070 City acceptance of new storm water facilities.

(a) The city will release the maintenance bond and accept for maintenance new residential storm water facilities constructed under an accepted permit as listed in Section [15.52.050](#) that meet the following conditions:

(1) An inspection by the director or designee has determined that the storm water facilities are functioning as designed;

(2) The storm water facilities have had at least two years of satisfactory operation and maintenance;

(3) The storm water facility, as designed and constructed, conforms to the provisions of the chapter;

(4) All easements and tract dedications required by this chapter, entitling the city to properly access, operate and maintain the subject drainage facility, have been recorded with the King County office of records and elections, and a copy has been conveyed to the city;

(5) Agreements between the property owner and maintenance contractor, if required, have been submitted to and approved by the city;

(6) For nonstandard drainage and water quality facilities, an operation and maintenance manual, including a schedule detailing the suggested seasonal timing and frequency of maintenance, has been submitted to and accepted by the city;

(7) A complete and accurate set of reproducible mylar as-builts, computer files of plans, and microfiche of plans has been received and accepted by the city.

(b) City Acceptance of New Nonresidential Storm Water Facilities. The city will release the maintenance bond for new nonresidential storm water facilities that meet all except items (4) and (6) in subsection (a) of this section. (Ord. 3711 § 4 (part), 1999)

15.52.080 Bonds and irrevocable license to enter.

(a) Prior to commencing construction on any project disturbing greater than one thousand square feet of land area that meet conditions for a sensitive site as set forth in the standard plans, the applicant must post an erosion control bond using the same procedures as provided in Chapter 175 of the Kirkland Zoning Code. The nature of the bond must permit the city to obtain the proceeds of the bond immediately upon request.

(1) The bond must be in an amount sufficient to cover the cost of corrective work on or off the site performed specifically for the given project. Before the city releases the bond, the applicant must do the following:

(A) Construct drainage facilities required in the storm water plan;

(B) Receive final approval of the storm water system from the city of Kirkland; and

(C) Pay all required fees.

(2) All applicants shall post a maintenance bond using the same procedures as provided in Chapter 175 of the Kirkland Zoning Code to ensure maintenance of installed storm water facilities for two years from the date of final approval of the storm water facilities. Before the city will release the bond, the storm water facilities must meet the requirements of Section [15.52.070](#).

(b) Prior to final approval of the storm water facilities, the property owner of all nonresidential storm water facilities shall submit, as described in Chapter 175 of the Kirkland Zoning Code, an irrevocable license to enter the property for the purposes of inspection. The following language must be included in the irrevocable license to enter:

(1) A statement that the property owner is to be responsible for the maintenance of storm water facilities on the property;

(2) A statement granting the director or designee the right to enter the property for the purposes of inspecting the storm water facilities; and

(3) A statement that the director shall have the authority to order repair or cleaning of the storm water facilities if the owner does not take action to conduct this work or if the site poses a threat to public health and safety. (Ord. 3711 § 4 (part), 1999)

Article III. Water Quality and Flood Protection

15.52.090 Illicit discharges and connections.

(a) All illicit discharges, as set forth in the standard plans, made either directly or indirectly to a public drainage control system, are prohibited and constitute a violation of this chapter.

(b) Certain discharges may be made directly or indirectly to a public drainage control system, or are exempt from subsection (a) of this section, as set forth in the standard plans.

(c) Any connection, identified by the director, that could convey anything not composed entirely of surface and storm water, directly to surface, storm, or ground waters is considered an illicit connection and is prohibited with the following exceptions: connections conveying allowable discharges, connections conveying discharges pursuant to a National Pollutant Discharge Elimination System (NPDES) permit as issued by the state (other than an NPDES storm water permit) or a state waste discharge permit, and connections conveying effluent from on-site sewage disposal systems to subsurface soils. Presence of prohibited connections as defined herein constitutes a violation of this chapter. (Ord. 3711 § 4 (part), 1999)

15.52.100 Source control best management practices.

Any person causing or allowing discharge to a public drainage facility, natural drainage system, surface and storm water, or ground water shall control contamination in the discharge by implementing appropriate source control BMPs. Failure to implement such practices shall constitute a violation of this chapter. Guidance on designing and implementing BMPs is provided in the standard plans. (Ord. 3711 § 4 (part), 1999)

15.52.110 Water quality standards.

The city of Kirkland hereby adopts by reference the water quality standards established under the authority of Chapter 90.48 RCW and contained within Chapter 173-201A WAC as presently written or hereafter amended. (Ord. 3711 § 4 (part), 1999)

15.52.120 Operation and maintenance of storm water facilities.

(a) Standards for maintenance of storm water facilities existing on public or private property within the city of Kirkland are contained in the standard plans. Any maintenance agreement submitted and approved by the city through the permit process shall supersede maintenance requirements contained in the standard plans.

(b) No person shall cause or permit any drainage facility on any public or private property to be obstructed, filled, graded, or used for disposal of debris. Any such activity constitutes a violation of this chapter.

(c) Any modification of an existing drainage facility must be approved and permitted by the city. Failure to obtain permits and approvals or to violate conditions thereof for any such alteration constitutes a violation of this chapter.

(d) The city will maintain all elements of the storm drainage system beginning at the first catch-basin within the public right-of-way, and in easements or tracts dedicated to and accepted by the city. All other facilities, including, but not limited to, nonresidential storm water facilities and roof downspout drains and driveway drains serving single-family residences, shall be maintained by the property owner.

(e) Maintenance of Nonresidential Storm Water Facilities by Owners.

(1) Any person or persons holding title to a nonresidential property for which storm water facilities have been required by the city of Kirkland shall be responsible for the continual operation, maintenance, and repair of said storm water facilities in accordance with the criteria set forth in the standard plans.

(2) For nonresidential storm water facilities, failure to meet the maintenance requirements specified in the standard plans constitutes a violation of this chapter, and shall be enforced against the owner(s) of the subject property served by the storm water facility.

(f) City Acceptance of Existing Residential Storm Water Facilities. The city may accept for maintenance those storm water facilities serving residential developments existing prior to the effective date of the ordinance codified in this chapter that meet the following conditions:

(1) The storm water facilities serve more than one individual house or property;

(2) An inspection by the director has determined that the storm water facilities are functioning as designed;

(3) The storm water facilities have had at least two years of satisfactory operation and maintenance, unless otherwise waived by the director;

(4) An inspection by the director has determined that the storm water facilities are accessible for maintenance using existing city equipment;

(5) The person or persons holding title to the properties served by the storm water facilities must submit a petition containing the signatures of the title holders of more than fifty percent of the lots served by the storm water facilities requesting that the city maintain the storm water facilities;

(6) All easements entitling the city to properly access, operate and maintain the subject storm water facilities have been conveyed to the city and have been recorded with the King County office of records and elections;

(7) The person or persons holding title to the properties served by the storm water facilities show proof of the correction of any defects in the drainage facilities, including provision of maintenance access, as required by the director.

(g) Disposal of waste from maintenance activities shall be conducted in accordance with the minimum Functional Standards for Solid Waste Handling, Chapter 173-304 WAC; guidelines published by the Washington State Department of Ecology for disposal of waste materials from storm water maintenance activities; and where appropriate, the Dangerous Waste Regulations, Chapter 173-303 WAC. (Ord. 3711 § 4 (part), 1999)

Article IV. Inspection and Enforcement

15.52.130 Inspection and sampling.

(a) Inspections for compliance with the provisions of this chapter shall be allowed as follows:

(1) Construction and Development Inspection. The director or designee shall have access to any site for which a permit as listed in Section [15.52.050](#) has been issued, during regular business hours, for the purpose of review of erosion control practices and storm water facilities, and to insure compliance with the terms of such permit. Applicants for any such permit shall agree in writing, as a condition of issuance thereof, that such access shall be permitted for such purposes. Inspection procedures shall be as outlined in Section [15.52.130\(b\)](#).

(2) Inspection for Cause. Whenever there is cause to believe that a violation of this chapter has been or is being committed the director or designee is authorized to inspect the property during regular business hours, and at any other time reasonable in the circumstances. Inspection procedures shall be as outlined in Section [15.52.130\(b\)](#).

(3) Inspection for Maintenance and Source Control Best Management Practices. The director or designee may inspect storm water facilities in order to ensure continued functioning of the facilities for the purposes for which they were constructed, and to ensure that maintenance is being performed in accordance with the standards of this chapter and any maintenance schedule adopted during the plan review process for the property. The director also may enter the site for

the purposes of observing source control best management practices. The property owner or other person in control of the site shall allow any authorized representative of the director or designee access during regular business hours, or at any other time reasonable in the circumstances, for the purpose of inspection, sampling, and records examination.

(b) Inspection Procedure. Prior to making any inspections, the director or designee shall present identification credentials, state the reason for the inspection and request entry of the owner or other person having charge or control of the property, if available, or as provided below.

(1) If the property or any building or structure on the property is unoccupied, the director or his designee shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portions of the property and request entry.

(2) If, after reasonable effort, the director or his designee is unable to locate the owner or other person(s) having charge or control of the property, and has reason to believe the condition of the site or of the storm water drainage system creates an imminent hazard to persons or property, the inspector may enter.

(c) Water sampling and analysis for determination of compliance with this chapter shall be allowed as follows:

(1) Sample Collection. When the director has reason to believe that a violation exists or is occurring on a property, the director shall have the authority to set up on the site such devices as are necessary to conduct sampling, inspection, compliance monitoring, or flow measuring operations.

(2) Sample Analysis. Analysis of samples collected during investigation of potential violations shall be analyzed by a laboratory certified by the State Department of Ecology as competent to perform the required analysis using standard practices and procedures.

(3) Cost of Sample Collection and Analysis. If it is determined that a violation of this chapter exists on the site, the owner of the property shall pay the city's actual costs for collecting samples and for laboratory analysis of those samples. If it is found that a violation does not exist, the city will pay such charges. (Ord. 3711 § 4 (part), 1999)

15.52.140 Enforcement, violations and penalties.

(a) The provisions set forth in this section shall apply to all violations of this chapter or the standard plans. In addition to the listed enforcement options, the city may also pursue any other lawful civil, criminal or equitable remedy or relief. At the director of public works' discretion, the choice of enforcement option taken and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the persons subject to the enforcement action. Enforcement options are cumulative and shall not be deemed exclusive.

(1) Nuisance. Any structure, condition, act or failure to act which violates any provision of this chapter shall be, and the same is declared to be, unlawful and a public nuisance, and may be abated using the procedures of Chapter [11.24](#) of

this code as currently written or hereafter amended or as otherwise allowed by law.

(2) Order To Cease Activity. The director or designee shall have the authority to order immediate cessation of any activity that is in violation of this chapter whether occurring on public or private property.

(A) Posting and Notice. The director or designee shall prominently post this order at the subject location and shall make reasonable attempts to send this order on to the property owner, the person in charge of the property, or the person causing the activity to be conducted or the improvement erected or altered.

(B) Effect. When an order to cease activity has been posted on the subject location, it is a violation for any person with actual or constructive knowledge of the order to conduct the activity or do the work covered by the order until such time as the director or designee has removed or authorized removal of the order. If an order to cease activity is violated, the director or designee may issue a notice of civil infraction under Section [15.52.140\(a\)\(4\)](#).

(c) Appeal. An order to cease activity may be appealed in like manner as a notice of civil infraction under Section [15.52.140\(a\)\(4\)](#). If a notice of civil infraction has also been issued and appealed, the appeals shall be consolidated for hearing.

(3) Notice of Violation. If the public works director or assignee determines that any structure, condition, act or failure to act exists that is in violation of this chapter, he/she may issue a notice of violation. This notice will specifically indicate:

(A) The name and address of the property owner or other person to whom the notice of violation is directed;

(B) The street address or description sufficient for identification of the location where the violation has occurred or is occurring;

(C) A description of the violation and a reference to the provision or provisions of this chapter being violated; and

(D) A statement of the action required to be taken to correct the violation as determined by the public works director and a date or time by which correction is to be completed.

(E) A statement that a monetary penalty in an amount per day for each violation as specified by Section [15.52.140\(c\)](#) shall be assessed against the person to whom the notice of violation is directed for each and every day, or portion of a day, on which the violation continues following the date set for correction.

(F) Notice to Property Owner and Responsible Party. The public works director or designee shall:

(i) Leave a copy of this notice with the occupant or responsible party or post it in a conspicuous place on the subject property; and

(ii) Send a copy of the notice by certified mail to the owner of the subject property; and

(iii) Extension. Upon written request received prior to the correction date or time, the public works director or designee may extend the date set for correction

for good cause. The public works director or designee may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible by the date established as good cause.

(4) Notice of Civil Infraction.

(A) General. The public works director or designee may cause a notice of civil infraction to be issued in either of the following circumstances:

(i) There is a violation of a posted order to cease activity; or

(ii) If, after the time specified in a notice of violation, the corrections specified in the notice of violation have not been completed, and a violation persists.

(B) Issuance. The notice of civil infraction will be issued to the owner of the property and to the responsible party, if the violation exists on private property, or to the party responsible for the activity or condition if the violation exists on public property.

(i) Notwithstanding the provisions of Sections [15.52.140\(a\)\(2\)](#) and [15.52.140\(a\)\(3\)](#), the public works director or designee may issue a notice of civil infraction without having issued an order to cease activity when a repeated violation occurs within a six-month period of time or otherwise at the director's or designee's discretion.

(ii) A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless appealed as provided in this chapter.

(C) Content. The following shall be included in the notice of civil infraction.

(i) The name and address of the property owner or other persons to whom the notice of civil infraction is directed;

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

(iii) A description of the violation and a reference to that provision or provisions of this chapter which has been violated;

(iv) A statement that the monetary penalty in the amount per day for each violation as specified in Section [15.52.140\(c\)](#) is assessed against the person to whom the notice of civil infraction is directed for each and every day, or portion thereof, during which the violation continues beyond the date or time established for correction in the notice of violation; and

(v) A statement that the person to whom the notice of civil infraction was directed must complete correction of the violation and may pay the monetary penalty imposed to the city clerk or may appeal the notice of civil infraction as provided in Section [15.52.140\(a\)\(4\)\(E\)](#).

(D) Service of Notice. The public works director or designee shall serve the notice of civil infraction upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil infraction by certified mail, postage prepaid, return receipt requested, to such person at his/her last known address or by posting the notice of civil infraction conspicuously on the affected property or structure. The person who effected personal service shall make proof of service at the time of service by a written declaration under penalty of perjury declaring the time and date and the manner in which service was made.

(E) Appeal to Hearing Examiner.

(i) A person to whom a notice of civil infraction is directed may appeal the notice of civil infraction, including the determination that a violation exists, or may appeal the amount of any monetary penalty imposed to the hearing examiner.

(ii) A person may appeal the notice of a civil infraction by filing a written notice of appeal with the department of public works within seven calendar days from the date of service of the notice of civil infraction.

(iii) The monetary penalty for a continuing violation does not accrue during the pendency of the appeal; however, the hearing examiner may impose a daily monetary penalty from the date of service of the notice of civil infraction if he finds that the appeal is frivolous or intended solely to delay compliance.

(iv) The hearing before the hearing examiner shall be conducted as follows:

i. The office of the hearing examiner shall give notice of the hearing before the hearing examiner to the appellant seventeen calendar days before such hearing.

ii. The hearing examiner shall conduct a hearing on the appeal pursuant to the rules of procedure as provided by the Administrative Procedure Act, Chapter 34.05 RCW. The city and the appellant may participate as parties in the hearing and each may call witnesses. The city shall have the burden of proof by a preponderance of the evidence that a violation has occurred.

(F) Action of Hearing Examiner.

(i) The hearing examiner shall determine whether the city has proven by a preponderance of the evidence that a violation has occurred and shall affirm, vacate, suspend, or modify the amount of any monetary penalty imposed by the notice of civil infraction with or without written conditions.

(ii) The hearing examiner shall consider the following in making his/her determination:

i. Whether the intent of the appeal was to delay compliance; or

ii. Whether the appeal is frivolous; or

iii. Whether there was a written contract or agreement with another party which specified the securing by the other party of the applicable permit or approval from the city; or

iv. Whether the appellant exercised reasonable and timely effort to comply with applicable development regulations; or

v. Any other relevant factors.

(G) Notice of Decision. The hearing examiner shall mail a copy of his or her decision to the appellant by certified mail, postage prepaid, return receipt requested.

(H) Judicial Review. The decision of the hearing examiner may be reviewed pursuant to the standards set forth in Chapter 36.70C RCW in King County superior court. The land use petition must be filed within twenty-one calendar days of the issuance of the final land use decision by the hearing examiner. For more information on the judicial review process for land use decisions, see Chapter 36.70C RCW.

(I) Criminal Penalty. Any willful violation of an order issued pursuant to this section for which a criminal penalty is not prescribed by state law is a misdemeanor.

(5) Criminal. Any willful violation of the provisions of this chapter is deemed a misdemeanor unless a more exacting charge is allowed by law.

(b) Damages. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be liable for all damages to public or private property arising from such violation. If the city repairs or replaces the damaged property, the actual cost to the city for such repair or replacement shall be assessed against the responsible party and shall be due and payable within ten days of the date of written notice of the same. Delinquent bills may be collected by a civil action in the Kirkland municipal court or as otherwise allowed by law. If the city obtains judgment, it shall also be entitled to reimbursement for court costs and reasonable attorney's fees expended in the litigation.

(c) Monetary Penalty. The amount of the monetary penalty per day or portion thereof for each violation of this chapter is as follows:

(1) The monetary penalty constitutes a personal obligation of the person to whom the notice of civil infraction is directed. Any monetary penalty assessed must be paid to the city clerk within seven calendar days from the date of service of notice of civil infraction or, if an appeal was filed pursuant to Section [15.52.140\(a\)\(3\)\(E\)](#), within seven calendar days of the hearing examiner's decision.

(2) The city attorney, on behalf of the city, is authorized to collect the monetary penalty by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate accrual of additional per diem monetary penalties so long as the violation continues.

(3) In the event of failure to appear at a hearing provided in Section [15.52.140\(a\)\(3\)\(E\)](#), the hearing examiner shall assess the monetary penalty prescribed and a penalty of twenty-five dollars.

(4) In the event of a conflict between this chapter and any other provision of this code of city ordinances providing for a civil penalty, this chapter shall control.

Payment of a monetary penalty pursuant to this chapter does not relieve a person of the duty to correct the violation as ordered by the director of public works.

(d) No Personal Liability for Acts or Omissions. Each person responsible for the enforcement or administration of this chapter and each member of a committee, board, commission or council responsible for making any decision or recommendation under this chapter is relieved from any personal liability whatsoever from any injury to person or property as a result of his/her act or omission in the good faith discharge of his/her responsibilities. If the person or member is sued for acts or omissions occurring in the good faith discharge of his/her responsibilities, the city shall defend and provide legal representation to the person or member until final disposition of the proceedings. The city shall reimburse the person or member for any costs incurred in defending against alleged liability for the acts or omissions of the person or members in the good faith discharge of his/her duties. (Ord. 3711 § 4 (part), 1999)

15.52.150 Conflicts.

If any provisions of any other chapter of the Kirkland Municipal Code, including the Zoning Code (Title [23](#) of the Kirkland Municipal Code), conflict with this chapter, that which provides more environmental protection shall apply unless specifically provided otherwise in this chapter. (Ord. 3711 § 4 (part), 1999)

15.52.160 Severability.

If any provision of this chapter or its application to any person or property is held invalid, the remainder of the chapter or the application of the provision to other persons or property if allowed shall not be affected. (Ord. 3711 § 4 (part), 1999)

CITY OF KIRKLAND123 FIFTH AVENUE • KIRKLAND, WASHINGTON 98033-6189 • (425) 587-3800

**DEPARTMENT OF PUBLIC WORKS
PRE-APPROVED PLANS POLICY****Policy D-4: Prohibited and Allowed Discharges to the Storm Drainage System**

As noted in Kirkland Municipal Code, Chapter 15.52.090 (Illicit discharges and connections), some discharges listed below are prohibited, and some discharges are allowed. In addition certain activities and circumstances are exempt from the prohibitions listed here.

In order to prevent discharge of pollutants such as those listed below, each property, business, and residence is required to implement best management practices, or BMPs. BMPs may include structural (i.e. water quality treatment facilities, roofs to cover materials) or non-structural (regular sweeping, moving activities inside) measures. Please contact the Public Works Department at (425) 587-3800 with any questions relating to BMPs or water quality.

A. Prohibited Discharges

Prohibited discharges include, but are not limited to, the following:

- 1) Trash or debris;
- 2) Construction materials;
- 3) Petroleum products including but not limited to oil, gasoline, grease, fuel oil, heating oil;
- 4) Antifreeze and other automotive products;
- 5) Metals in either particulate or dissolved form;
- 6) Radioactive material;
- 7) Batteries;
- 8) Acids, alkalis, or bases;
- 9) Paints, stains, resins, lacquers, or varnishes;
- 10) Degreasers and/or solvents;
- 11) Drain cleaners;
- 12) Pesticides, herbicides, or fertilizers;
- 13) Steam cleaning wastes;
- 14) Soaps, detergents, or ammonia;
- 15) Swimming pool backwash;
- 16) Chlorine, bromine, and other disinfectants;
- 17) Heated water;
- 18) Domestic animal wastes;
- 19) Sewage;
- 20) Recreational vehicle waste;
- 21) Animal carcasses;
- 22) Food wastes;
- 23) Bark and other fibrous materials;
- 24) Collected lawn clippings, leaves, or branches;
- 25) Silt, sediment, or gravel;
- 26) Dyes (except as stated below);
- 27) Chemicals not normally found in uncontaminated water; and
- 28) Any hazardous material or waste, not listed above

B. Allowable Discharges

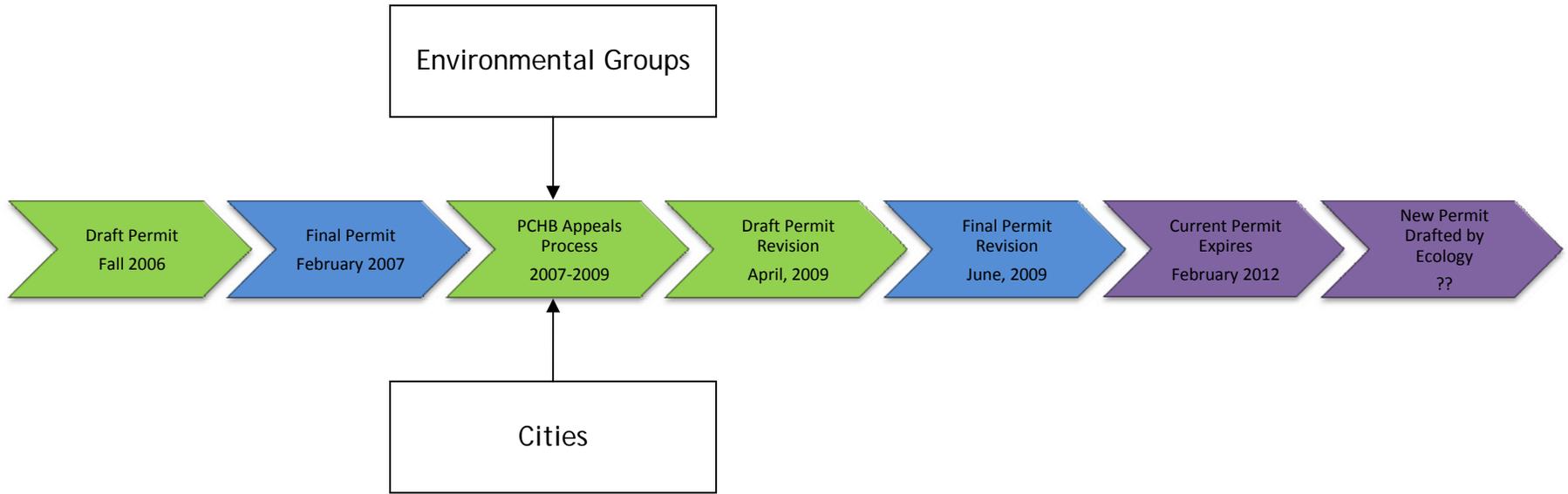
The following types of discharges shall not be considered prohibited discharges for the purpose of this chapter unless the Director of Public Works or his/her designee determines that the type of discharge, whether singly or in combination with others, is causing significant contamination of surface and storm water or ground water:

- 1) Potable water;
- 2) Potable water line flushing;
- 3) Uncontaminated water from crawl space pumps of footing drains;
- 4) Lawn watering;
- 5) Dechlorinated swimming pool water;
- 6) Materials placed as part of an approved habitat restoration or bank stabilization project;
- 7) Natural uncontaminated surface water or ground water;
- 8) Flows from riparian habitats and wetlands;
- 9) The following discharges from boats; engine exhaust, cooling waters, effluent from sinks, showers and laundry facilities, and treated discharge from Type I and Type II marine sanitation devices;
- 10) Common practices for water well disinfection; and
- 11) Other types of discharges as determined by the Director of Public Works or his/her designee

C. Exemptions

- 1) Dye testing is allowable but requires verbal notification of the Department of Public Works at least one day prior to the date of test. The King County Health Department is exempt from this requirement.
- 2) If a person has properly designed, constructed, implemented, and is maintaining BMPs, and is carrying out all known, available, and reasonable methods of prevention, control, and treatment, and contaminants continue to enter surface water storm water or ground water, that person shall not be in violation of Chapter 15.52 KMC.
- 3) Emergency response activities or other actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health or safety, shall be exempt from the prohibitions listed above. The person responsible for emergency response activities should, however, take steps to ensure that the discharges resulting from such activities are minimized to the greatest extent possible. In addition, this person shall evaluate BMPs and the site plan, where applicable, to restrict recurrence of contaminated discharges.

NPDES Phase II Municipal Stormwater Permits – Timeframe and Opportunities for Input



Point for public input on permit



Point when permit and modifications were issued by Ecology



Point when current permit expires, and new permit is issued



CITY OF KIRKLAND
Department of Public Works
 123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
 www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Jenny Gaus, Environmental Services Supervisor
 Rob Jammerman, Development and Environmental Services Manager
 Daryl Grigsby, Public Works Director

Date: February 25, 2009

Subject: Water Quality Treatment for City Streets

This memo provides an update on water quality treatment of runoff from public streets. Currently, the City provides water quality treatment of public streets through one of the following means:

- √ Added to or required as part of City transportation projects
- √ Required as part of private development projects
- √ Retrofit as stand-alone projects in the surface water CIP

The following projects have been constructed in the past year, or for which construction will be started within the next year using these methods:

Added to or required as part of City transportation projects

The following table details City projects that are adding new water quality treatment facilities. Staff review each CIP project, and look for opportunities to increase water quality treatment beyond that required as mitigation for the project. The NE 124th/124th project is an example of this approach. Please see below for an overview of existing water quality treatment facilities that are publicly owned and operated.

Project Name (Number)	WQ Treatment Type	Area Treated	Comments
116 th Ave between NE 60 th and NE 70 th Streets (NM-0042)	Canister filter vaults	½ acre	Construction complete in 2008
NE 124 th Street at 124 th Ave NE (TR-0070, SD-0029)	Canister filter vaults	1.1 acres	Additional treatment added to project using surface water funds. Construction to start in 2009
NE 73 rd Street between 130 th Ave NE and 132 nd Ave NE (NM-	Pervious sidewalks and rain gardens	¼ acre	Construction completed fall 2008
Highlands sidewalks (NM-0044)	Filterra tree boxes	1/3 acre	Construction to start in 2009
Kirkland Transit Center (OPL-CC00)	Filterra tree boxes	½ acre	Construction to start in 2009

Required as part of private development projects

Although the pace of development slowed considerably in 2008, construction started on approximately 50 projects, and construction was completed on 83 projects. Of these projects, approximately ¼ were required to provide water quality treatment for runoff from driveable surfaces (public streets, parking lots, driveways). Water quality treatment is generally required when a project creates or replaces 5,000 square feet or more of driveable surfaces. The following are examples of the larger projects that provided treatment for runoff from public streets:

- Garden Gate Subdivision– NE 132nd Street at 112th Ave NE: installed rain gardens to treat runoff from about 2 blocks of the newly constructed 112th Ave NE
- City Church Cottages multi-family - NE 90th Street at 132nd Ave NE: constructed a wet pond for water quality treatment and detention to serve approximately 1 block of newly constructed NE 90th Street
- Moore Short Plat – 12930 NE 88th Street: constructed a wet/detention vault to provide treatment for approximately 3 blocks of new public streets (130th Ave NE from NE 88th Street to NE 90th Street and NE 90th Street West from 130th Ave NE to what would be 129th Ave NE)

Retrofit as stand-alone

No specific retrofitting projects have been constructed to date. The following projects are in design and will provide improved water quality:

Surface Water Sediment Pond reclamation (SD-0058): project will rehabilitate existing water quality ponds and/or will replace low-functioning ponds with new water quality treatment facilities such as canister filter vaults or Filterra tree boxes.

In addition, the Juanita Basin Retrofitting Analysis project (an Ecology grant with work being done in a partnership between Kirkland and King County) will produce lists of water quality retrofit projects that could be constructed to treat runoff from both public and private properties in the Juanita Creek watershed.

Existing Water Quality Treatment for City Streets

The City currently has the following water quality treatment facilities that serve public streets:

- Oil/water separators (includes detention control structures and stand-alone oil/water separators): 735
- Water Quality Treatment Swales: 84
- Water Quality Treatment Vaults/Filters: 123
- Ponds (water quality and detention): 81

These facilities are maintained by the City and provide treatment for a portion of the approximately 1400 acres of impervious surface that are in the public right of way.



Figure 1 – An oil/water separator at work. Oil floats on the water surface, while water exits the vertical pipe that extends below the water surface. Thus oil is trapped and can then be removed.



Figure 2 – This catch-basin contains canisters filled with a zeolite/perlite mix that remove pollutants from stormwater

ORDINANCE NO. 4200

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO STORM AND SURFACE WATER MANAGEMENT AND WATER QUALITY.

WHEREAS, the Washington State Department of Ecology (DOE) issued the Western Washington Phase II Municipal Stormwater Permit (Phase II NPDES Permit) on February 16, 2007, under authority delegated to it by the US Environmental Protection Agency, pursuant to the Federal Clean Water Act (33 U.S.C. §1251 et seq.) (CWA); and

WHEREAS, the intent of the Phase II NPDES Permit is to compel jurisdictions of certain density and population, which includes the City of Kirkland (the City), to take steps to reduce the discharge of pollutants in stormwater; and

WHEREAS, the City must therefore seek coverage under the Phase II NPDES Permit or face third-party lawsuits, fines, or other penalties under the CWA; and

WHEREAS, the Phase II NPDES Permit requires that jurisdictions seeking coverage comply with the conditions of the permit by taking and documenting actions to reduce the discharge of pollutants in stormwater in the following six areas:

- 1) Public Education and Outreach,
- 2) Public Involvement and Participation,
- 3) Illicit Discharge Detection and Elimination,
- 4) Controlling Runoff from New Development,
- 5) Redevelopment and Construction Sites, and
- 6) Pollution Prevention and Operation and Maintenance for Municipal Operations; and

WHEREAS, the Phase II NPDES Permit requires that jurisdictions adopt certain alterations to surface and stormwater portions of their ordinances and associated requirements located elsewhere relating to item 3) above by August 16, 2009, in order to maintain compliance; and

WHEREAS, in addition, the proposed Kirkland Municipal Code (the KMC) changes bear a substantial relationship to, and are necessary for, the public health, safety and general welfare of the City and its residents; and will provide increased protection to the City's wetlands, streams and lakes; and

WHEREAS, an amount for monetary penalties to be imposed for violations of the surface water regulations was not established in the KMC; and

WHEREAS, RCW 35.67.020(3) requires municipalities to reduce storm and surface water charges by a minimum of 10% for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system.

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

Section 1. Section 15.04.010 of the Kirkland Municipal Code is hereby amended to read as follows:

15.04.010 ~~Generally~~ Definitions.

The definitions contained in this chapter and in Article III of Volume I of the 2005 Stormwater Management Manual for Western Washington, herein incorporated by reference, apply throughout this title, unless from context another meaning is clearly intended. In the event of conflict, the definitions in the Manual will control. The city engineer shall at all times keep on file with the city clerk, for reference by the general public, not less than three copies of the Manual as herein adopted by reference.

Section 2. Section 15.04.034 of the Kirkland Municipal Code is hereby deleted.

Section 3. Section 15.04.040 of the Kirkland Municipal Code is hereby deleted.

Section 4. Section 15.04.065 of the Kirkland Municipal Code is hereby deleted.

Section 5. Section 15.04.083 of the Kirkland Municipal Code is hereby deleted.

Section 6. Section 15.04.084 of the Kirkland Municipal Code is hereby deleted.

Section 7. Section 15.04.100 of the Kirkland Municipal Code is hereby deleted.

Section 8. Section 15.04.105 of the Kirkland Municipal Code is hereby deleted.

Section 9. Section 15.04.145 of the Kirkland Municipal Code is hereby deleted.

Section 10. Section 15.04.146 of the Kirkland Municipal Code is hereby deleted.

Section 11. Section 15.04.175 of the Kirkland Municipal Code is hereby deleted.

Section 12. Section 15.04.220 of the Kirkland Municipal Code is hereby deleted.

Section 13. Section 15.04.225 of the Kirkland Municipal Code is hereby deleted.

Section 14. Section 15.04.235 of the Kirkland Municipal Code is hereby deleted.

Section 15. Section 15.04.320 of the Kirkland Municipal Code is hereby deleted.

Section 16. Section 15.04.335 of the Kirkland Municipal Code is hereby deleted.

Section 17. Section 15.04.345 of the Kirkland Municipal Code is hereby deleted.

Section 18. Section 15.04.350 of the Kirkland Municipal Code is hereby deleted.

Section 19. Kirkland Municipal Code Section 15.52.090 is hereby amended to read as follows:

15.52.090 Illicit discharges and connections.

~~(a) — All illicit discharges, as set forth in the standard plans, made either directly or indirectly to a public drainage control system, are prohibited and constitute a violation of this chapter.~~

~~(b) — Certain discharges may be made directly or indirectly to a public drainage control system, or are exempt from subsection (a) of this section, as set forth in the standard plans.~~

~~(c) — Any connection, identified by the director, that could convey anything not composed entirely of surface and storm water, directly to surface, storm, or ground waters is considered an illicit connection and is prohibited with the following exceptions: connections conveying allowable discharges, connections conveying discharges pursuant to a National Pollutant Discharge Elimination System (NPDES) permit as issued by the state (other than an NPDES storm water permit) or a state waste discharge permit, and connections conveying effluent from on-site sewage disposal systems to subsurface soils. Presence of prohibited connections as defined herein constitutes a violation of this chapter.~~

(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:

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

(b) Allowable discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this chapter unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

1. Diverted stream flows.
2. Rising ground waters.
3. Uncontaminated ground water infiltration – as defined in 40 CFR 35.2005(20)

4. Uncontaminated pumped ground water.
5. Foundation drains.
6. Air conditioning condensation.
7. Irrigation water from agricultural sources that is comingled with urban stormwater.
8. Springs.
9. Water from crawl space pumps.
10. Footing drains.
11. Flows from riparian habitats and wetlands.
12. Discharges from emergency fire fighting activities.

(c) Conditional discharges. The following types of discharges shall not be considered illicit discharges for the purpose of this chapter if they meet the stated conditions, or unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

1. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system.
2. Lawn watering and other irrigation runoff are permitted but shall be minimized.
3. De-chlorinated swimming pool discharges. These discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system.
4. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street.
5. Non-storm water discharges covered by another NPDES permit, provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm drain system.

(d) Prohibition of Illicit Connections

1. The construction, use, maintenance, or continued existence of illicit connections to the storm drain system are prohibited and constitute a violation of this chapter.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

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

Section 20. Kirkland Municipal Code Section 15.52.100 is hereby amended to read as follows:

15.52.100 Source control best management practices.

Any person causing or allowing discharge to a public drainage facility, natural drainage system, surface and storm water, or ground water shall control contamination in the discharge by implementing appropriate source control BMPs, as described in Volume IV of the 2005 Stormwater Management Manual for Western Washington. Failure to implement such practices shall constitute a violation of this chapter. Guidance on designing and implementing BMPs is provided in the standard plans.

Section 21. Kirkland Municipal Code Section 15.52.140 is hereby amended to read as follows:

15.52.140 Enforcement, violations and penalties.

(a) The provisions set forth in this section shall apply to all violations of this chapter or the standard plans. In addition to the listed enforcement options, the city may also pursue any other lawful civil, criminal or equitable remedy or relief. At the director of public works' discretion, the choice of enforcement option taken and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the persons subject to the enforcement action. Enforcement options are cumulative and shall not be deemed exclusive.

(1) Nuisance. Any structure, condition, act or failure to act which violates any provision of this chapter shall be, and the same is declared to be, unlawful and a public nuisance, and may be abated using the procedures of Chapter 11.24 of this code as currently written or hereafter amended or as otherwise allowed by law.

(2) Order To Cease Activity. The director or designee shall have the authority to order immediate cessation of any activity that is in violation of this chapter whether occurring on public or private property.

(A) Posting and Notice. The director or designee shall prominently post this order at the subject location and shall make reasonable attempts to send this order on to the property owner, the person in

charge of the property, or the person causing the activity to be conducted or the improvement erected or altered.

(B) Effect. When an order to cease activity has been posted on the subject location, it is a violation for any person with actual or constructive knowledge of the order to conduct the activity or do the work covered by the order until such time as the director or designee has removed or authorized removal of the order. If an order to cease activity is violated, the director or designee may issue a notice of civil infraction under Section 15.52.140(a)(4).

(c) Appeal. An order to cease activity may be appealed in like manner as a notice of civil infraction under Section 15.52.140(a)(4). If a notice of civil infraction has also been issued and appealed, the appeals shall be consolidated for hearing.

(3) Notice of Violation. If the public works director or assignee determines that any structure, condition, act or failure to act exists that is in violation of this chapter, he/she may issue a notice of violation. This notice will specifically indicate:

(A) The name and address of the property owner or other person to whom the notice of violation is directed;

(B) The street address or description sufficient for identification of the location where the violation has occurred or is occurring;

(C) A description of the violation and a reference to the provision or provisions of this chapter being violated; and

(D) A statement of the action required to be taken to correct the violation as determined by the public works director and a date or time by which correction is to be completed.

(E) A statement that a monetary penalty in an amount per day for each violation as specified by Section 15.52.140(c) shall be assessed against the person to whom the notice of violation is directed for each and every day, or portion of a day, on which the violation continues following the date set for correction.

(F) Notice to Property Owner and Responsible Party. The public works director or designee shall:

(i) Leave a copy of this notice with the occupant or responsible party or post it in a conspicuous place on the subject property; and

(ii) Send a copy of the notice by certified mail to the owner of the subject property; and

(iii) Extension. Upon written request received prior to the correction date or time, the public works director or designee may extend the date set for correction for good cause. The public works director or designee may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible by the date established as good cause.

(4) Notice of Civil Infraction.

(A) General. The public works director or designee may cause a notice of civil infraction to be issued in either of the following circumstances:

(i) There is a violation of a posted order to cease activity; or

(ii) If, after the time specified in a notice of violation, the corrections specified in the notice of violation have not been completed, and a violation persists.

(B) Issuance. The notice of civil infraction will be issued to the owner of the property and to the responsible party, if the violation exists on private property, or to the party responsible for the activity or condition if the violation exists on public property.

(i) Notwithstanding the provisions of Sections 15.52.140(a)(2) and 15.52.140(a)(3), the public works director or designee may issue a notice of civil infraction without having issued an order to cease activity when a repeated violation occurs within a six-month period of time or otherwise at the director's or designee's discretion.

(ii) A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless appealed as provided in this chapter.

(C) Content. The following shall be included in the notice of civil infraction.

(i) The name and address of the property owner or other persons to whom the notice of civil infraction is directed;

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

(iii) A description of the violation and a reference to that provision or provisions of this chapter which has been violated;

(iv) A statement that the monetary penalty in the amount per day for each violation as specified in Section 15.52.140(c) is assessed against the person to whom the notice of civil infraction is directed for each and every day, or portion thereof, during which the violation continues beyond the date or time established for correction in the notice of violation; and

(v) A statement that the person to whom the notice of civil infraction was directed must complete correction of the violation and may pay the monetary penalty imposed to the city clerk or may appeal the notice of civil infraction as provided in Section 15.52.140(a)(4)(E).

(D) Service of Notice. The public works director or designee shall serve the notice of civil infraction upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil infraction by certified mail, postage prepaid, return receipt requested, to such person at his/her last known address or by posting the notice of civil infraction conspicuously on the affected property or structure. The person who effected personal service shall make proof of service at the time of service by a written declaration under penalty of perjury declaring the time and date and the manner in which service was made.

(E) Appeal to Hearing Examiner.

(i) A person to whom a notice of civil infraction is directed may appeal the notice of civil infraction, including the determination that a

violation exists, or may appeal the amount of any monetary penalty imposed to the hearing examiner.

(ii) A person may appeal the notice of a civil infraction by filing a written notice of appeal with the department of public works within seven calendar days from the date of service of the notice of civil infraction.

(iii) The monetary penalty for a continuing violation does not accrue during the pendency of the appeal; however, the hearing examiner may impose a daily monetary penalty from the date of service of the notice of civil infraction if he finds that the appeal is frivolous or intended solely to delay compliance.

(iv) The hearing before the hearing examiner shall be conducted as follows:

i. The office of the hearing examiner shall give notice of the hearing before the hearing examiner to the appellant seventeen calendar days before such hearing.

ii. The hearing examiner shall conduct a hearing on the appeal pursuant to the rules of procedure as provided by the Administrative Procedure Act, Chapter 34.05 RCW. The city and the appellant may participate as parties in the hearing and each may call witnesses. The city shall have the burden of proof by a preponderance of the evidence that a violation has occurred.

(F) Action of Hearing Examiner.

(i) The hearing examiner shall determine whether the city has proven by a preponderance of the evidence that a violation has occurred and shall affirm, vacate, suspend, or modify the amount of any monetary penalty imposed by the notice of civil infraction with or without written conditions.

(ii) The hearing examiner shall consider the following in making his/her determination:

i. Whether the intent of the appeal was to delay compliance; or

ii. Whether the appeal is frivolous; or

iii. Whether there was a written contract or agreement with another party which specified the securing by the other party of the applicable permit or approval from the city; or

iv. Whether the appellant exercised reasonable and timely effort to comply with applicable development regulations; or

v. Any other relevant factors.

(G) Notice of Decision. The hearing examiner shall mail a copy of his or her decision to the appellant by certified mail, postage prepaid, return receipt requested.

(H) Judicial Review. The decision of the hearing examiner may be reviewed pursuant to the standards set forth in Chapter 36.70C RCW in King County superior court. The land use petition must be filed within twenty-one calendar days of the issuance of the final land use decision by the hearing examiner. For more information on the judicial review process for land use decisions, see Chapter 36.70C RCW.

(l) Criminal Penalty. Any willful violation of an order issued pursuant to this section for which a criminal penalty is not prescribed by state law is a misdemeanor.

(5) Criminal. Any willful violation of the provisions of this chapter is deemed a misdemeanor unless a more exacting charge is allowed by law.

(b) Damages. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be liable for all damages to public or private property arising from such violation. If the city repairs or replaces the damaged property, the actual cost to the city for such repair or replacement shall be assessed against the responsible party and shall be due and payable within ten days of the date of written notice of the same. Delinquent bills may be collected by a civil action in the Kirkland municipal court or as otherwise allowed by law. If the city obtains judgment, it shall also be entitled to reimbursement for court costs and reasonable attorney's fees expended in the litigation.

(c) Monetary Penalty. The amount of the monetary penalty per day or portion thereof for each violation of this chapter is as follows:

(1) The monetary penalty constitutes a personal obligation of the person to whom the notice of civil infraction is directed. Any monetary penalty assessed must be paid to the city clerk within seven calendar days from the date of service of notice of civil infraction or, if an appeal was filed pursuant to Section 15.52.140(a)(3)(E), within seven calendar days of the hearing examiner's decision. Payment of a monetary penalty does not relieve a violator of the duty to correct the violation.

(2) The city attorney, on behalf of the city, is authorized to collect the monetary penalty by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate accrual of additional per diem monetary penalties so long as the violation continues.

(3) In the event of failure to appear at a hearing provided in Section 15.52.140(a)(3)(E), the hearing examiner shall assess the monetary penalty prescribed and a penalty of twenty-five dollars.

(4) In the event of a conflict between this chapter and any other provision of this code of city ordinances providing for a civil penalty, this chapter shall control.

Payment of a monetary penalty pursuant to this chapter does not relieve a person of the duty to correct the violation as ordered by the director of public works.

(5) The following monetary penalties apply for each violation, for each and every day or portion of a day on which the violation continues following the date and time set for correction:

(A) First violation is \$100.00

(B) Second violation is \$200.00

(C) Third violation is \$300.00

(D) Additional violation in excess of three is \$500.00

(d) No Personal Liability for Acts or Omissions. Each person responsible for the enforcement or administration of this chapter and each member of a committee, board, commission or council responsible for making any decision or recommendation under this chapter is relieved from any personal liability whatsoever from any injury to person or property as a result of his/her act or omission in the good faith discharge of his/her responsibilities. If the person or member is sued for acts or omissions occurring in the good faith discharge of his/her responsibilities, the city shall defend and provide legal representation to the person or member until final disposition of the proceedings. The city shall reimburse the person or member for any costs incurred in defending against alleged liability for the acts or omissions of the person or members in the good faith discharge of his/her duties.

Section 22. Kirkland Municipal Code Section 15.56.010 is hereby amended to read as follows:

15.56.010 Service rates established.

The monthly service rates to be paid to the city by the owners of developed land within the city of Kirkland are established as set forth in this chapter. The rate for storm water services shall be charged whether the premises are occupied or vacant; provided the site contains impervious surface. An undeveloped parcel not containing impervious surface area will not be charged for storm water services.

Section 23. Chapter 15.56 of the Kirkland Municipal Code is hereby amended by the addition of a new Section 15.56.060 to read as follows:

15.56.060 Qualified rainwater harvesting discount.

The City of Kirkland shall provide a 10% reduction in the monthly service rate for parcels containing new or remodeled commercial buildings that utilizes a permissive rainwater harvesting system. The system must be designed to collect and use at least 95% of the average annual runoff volume from the impervious surface. A system that involves indoor uses of rainwater must also be permitted by Seattle-King County Department of Health to qualify for the rate reduction. Qualifying for the monthly service rate reduction does not relieve the property owner from the obligation to comply with applicable stormwater and drainage code requirements for the buildings and site.

Section 24. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 25. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this _____ day of _____, 2009.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4200

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO STORM AND SURFACE WATER MANAGEMENT AND WATER QUALITY.

SECTION 1. Amends Section 15.04.010 of the KMC related to definitions and incorporates definitions found in Article III of Volume 1 of the 2005 Stormwater Management Manual for Western Washington.

SECTIONS 2 - 18. Deletes various sections of Chapter 15.04 of the KMC that provided definitions potentially in conflict with the Manual.

SECTION 19. Amends KMC Section 15.52.090 relating to illicit discharges and connections.

SECTION 20. Amends KMC Section 15.52.100 relating to source control best management practices.

SECTION 21. Amends KMC Section 15.52.140 relating to enforcement, violations and penalties.

SECTION 22. Amends KMC Section 15.56.010 relating to service rates.

SECTION 23. Adds a new KMC Section 15.56.060 relating to qualified rainwater harvesting discount.

SECTION 24. Provides a severability clause for the ordinance.

SECTION 25. 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 _____, 2009.

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

City Clerk