

ORDINANCE O-4756

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING SURFACE WATER MANAGEMENT REGULATIONS.

1 WHEREAS, the Environmental Chapter of the Comprehensive  
2 Plan sets forth policies for environmental protection, including  
3 protection of surface water; and  
4

5 WHEREAS, since May of 2016, the City has enforced its surface  
6 water code, Kirkland Municipal Code ("KMC") Chapter 15.52, through a  
7 special chapter in its code enforcement regulations, KMC 1.12.200, to  
8 recover clean-up costs from violators and to levy fines in appropriate  
9 cases, such as when a violation has been committed and the responsible  
10 Party(s) have been previously educated on the KMC; and  
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12 WHEREAS, based upon the City's experience with these code  
13 enforcement regulations over the past several years, including the  
14 effectiveness of the regulations to prevent environmental damage  
15 and/or correct environmental damage, and the clarity of the language  
16 of the code language, staff recommends certain revisions to the City's  
17 Code Enforcement Regulations in Chapter 1.12 KMC; and  
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19 NOW, THEREFORE, the City Council of the City of Kirkland do  
20 ordain as follows:  
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22 Section 1. Kirkland Municipal Code Section 1.12.020 is amended  
23 to read as follows:  
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25 **1.12.020 Definitions.**  
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27 As used in this chapter, unless a different meaning is plainly required:  
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29 (a) "Abate" means to repair, replace, remove, destroy or otherwise  
30 remedy a condition which constitutes a civil violation by such means,  
31 in such a manner and to such an extent as the applicable department  
32 director determines is necessary in the interest of the general health,  
33 safety and welfare of the community.

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

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

37 (d) "Civil violation" means a violation for which a monetary penalty  
38 may be imposed as specified in this chapter. Each day or portion of a  
39 day during which a violation occurs or exists is a separate violation.  
40 Traffic infractions issued pursuant to Title 12 are specifically excluded  
41 from the application of this chapter.

- 42 (e) "Development" means the erection, alteration, enlargement,  
43 demolition, maintenance or use of any structure or the alteration or  
44 use of any land above, at or below ground or water level, and all acts  
45 governed by a city regulation.
- 46 (f) "Emergency" means a situation which in the opinion of the  
47 applicable department director requires immediate action to prevent or  
48 eliminate an immediate threat to the health or safety of persons or  
49 property.
- 50 (g) "Hearing examiner" means the Kirkland hearing examiner and  
51 the office thereof established pursuant to Chapter 3.34.
- 52 (h) "Omission" means a failure to act.
- 53 (i) "Person" means any individual, firm, association, partnership,  
54 corporation or any entity, public or private. For purposes of this  
55 chapter only, "person" does not mean the City of Kirkland.
- 56 (j) "Person responsible for the violation" means any person who is  
57 required by the applicable regulation to comply therewith, or who  
58 commits any act or omission which is a civil violation or causes or  
59 permits a civil violation to occur or remain upon property in the city,  
60 and includes but is not limited to owner(s), lessor(s), tenant(s),  
61 vendor(s), contractor(s), or other person(s) entitled to control, use  
62 and/or occupy property where a civil violation occurs. For violations of  
63 the city sign regulations, this definition includes, but is not limited to,  
64 sign installers/posters, sign owners, and any other persons who cause  
65 or participate in the placement of a sign in a manner that constitutes a  
66 civil violation. For violations of city tree regulations, this definition  
67 includes any person who caused or participated in the removal of a  
68 tree in a manner that constitutes a civil violation.
- 69 (k) "Regulation" means and includes the following, as they now exist  
70 or are hereafter amended:
- 71 (1) Title 23 (Kirkland Zoning Code);
- 72 (2) Title 21, Buildings and Construction (including codes adopted by  
73 reference);
- 74 (3) Chapter 15.52 (Surface Water Management);
- 75 (4) Title 29 (Land Surface Modification);
- 76 (5) Chapter 19.04 (Obstructing Streets or Sidewalks);
- 77 (6) Chapter 11.76 (Junk Vehicles);
- 78 (7) Chapter 11.24 (Nuisances);
- 79 (8) Chapter 11.64 (Littering);

80 (9) The terms and conditions of any permit or approval issued by  
81 the city, or any concomitant agreement with the city;

82 (10) Chapter 7.74 (Fair Housing Regulations);

83 (11) Chapter 16.05 (Retail Carryout Bags, including definitions set  
84 forth in Chapter 16.04);

85 (12) Chapter 16.08 (Garbage Disposal); and

86 (13) Chapter 7.02 (Business Licenses and Regulations).

87 (l) "Repeat violation" means a violation of the same regulation in  
88 any location in the city by the same person or responsible party for  
89 which compliance previously has been sought or a notice of civil  
90 violation has been issued.

91 (m) "Responsible party" means any person who is required by the  
92 applicable regulation to comply therewith, or who commits any act or  
93 omission which is a civil violation or causes or permits a civil violation  
94 to occur or remain upon property in the city, and includes but is not  
95 limited to owner(s), lessor(s), tenant(s), vendor(s), contractor(s), or  
96 other person(s) entitled to control, use and/or occupy property where  
97 a civil violation occurs.

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

102 Section 2. Kirkland Municipal Code Section 1.12.200 is amended  
103 to read as follows:

104  
105 **1.12.200 Special provisions relating to enforcement of Chapter**  
106 **15.52 (Surface Water Management).**  
107

108 (a) General Requirements. This section applies to violations of  
109 Chapter 15.52, including illicit discharges and connections that  
110 discharge into the municipal storm drain system and/or surface and  
111 ground waters. Enforcement shall be conducted in accordance with  
112 procedures set forth in this chapter.

113 Special enforcement provisions related to illicit discharges and  
114 connections are set forth in this section.

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

117 (c) Determining Fines for Illicit Discharges and Connections and  
118 Other Violations of Chapter 15.52.

- 119 (1) Each action or omission taken in violation of Chapter 15.52 shall  
 120 constitute a separate violation.
- 121 (2) Any person who aids or abets the violation shall be considered to  
 122 have committed a violation for purpose of assessment of fines.
- 123 (3) Fines for a violation shall be determined using the surface water  
 124 enforcement matrix (Table 1) and administered per violation.

**Table 1. Surface Water Enforcement Matrix**

<b>Enforcement Evaluation Criteria</b>	<b>No Zero (0) points</b>	<b>Possibly One (1) point</b>	<b>Definitely Two (2) points</b>
1) Perceived Public Health Risk?			
2) Environmental Damage?			
3) <del>Impacting</del> Discharge into Municipal Storm Drain System?			
4) <del>Willful or Knowing</del> Violation?			
5) <del>4)</del> Unresponsive in Correcting Action?			
6) <del>5)</del> Improper Operation, or Inadequate Maintenance, or <u>inadequate implementation of a required plan that addresses stormwater management (e.g., but not limited to, temporary sediment and erosion control (TESC) plan, stormwater pollution prevention plan (SWPPP), permit conditions and/notes)?</u>			
7) <del>Economic Benefit to</del> Noncompliance?			

125 The surface water enforcement matrix (Table 1) is comprised of a set  
 126 of criteria formulated as questions for the director to evaluate and  
 127 answer. The director uses the guidelines below to determine the total

- 128 points to be assessed according to the violation. The surface water  
 129 fine(s) are determined by the total score of the matrix.
- 130 1. Did the violation result in a public health risk?
- 131 a. ~~Answer "no"~~ Asses zero (0) points if there is no evidence to  
 132 support a claim of public health risk or adverse health effects.
- 133 b. ~~Answer "possibly"~~ Asses one (1) point if evidence supports a claim  
 134 of public health risk and there is a plausible connection between this  
 135 violation and health effect.
- 136 c. ~~Answer "definitely"~~ Asses two (2) points if there is ~~direct~~ evidence  
 137 directly linking public health risk or adverse effects with the violation.
- 138 2. Did the violation result in environmental (e.g., physical, chemical,  
 139 or biological) damage?
- 140 a. ~~Answer "no"~~ Asses zero (0) points if there is no evidence to  
 141 support a claim of environmental damage.
- 142 b. ~~Answer "possibly"~~ Asses one (1) point if environmental damage  
 143 can be reasonably inferred from evidence or knowledge of the effects  
 144 of the violation.
- 145 c. ~~Answer "definitely"~~ Asses two (2) points if there is ~~direct~~ evidence  
 146 directly linking environmental damage with the violation.
- 147 3. Did the violation ~~impact~~ discharge into the municipal storm drain  
 148 system?
- 149 a.) ~~Answer "no"~~ Asses zero (0) points if there is no evidence to  
 150 support a claim of impact to municipal storm drain system.
- 151 b. ~~Answer "possibly"~~ Asses one (1) point if impact to municipal  
 152 storm drain system can be reasonably inferred from evidence or  
 153 knowledge of the effects of the violation.
- 154 c. ~~Answer "definitely"~~ Asses two (2) points if there is ~~direct~~ evidence  
 155 directly linking municipal storm drain system impacts to the violation.
- 156 ~~4. Was the action a willful and knowing violation?~~
- 157 a. ~~Answer "no" if the violator obviously did not know that the action~~  
 158 ~~or inaction constituted a violation.~~
- 159 b. ~~Answer "possibly" if the violator should have known.~~
- 160 c. ~~Answer "definitely" if the violator clearly knew or was previously~~  
 161 ~~informed of the violation by the city's inspectors or permit conditions.~~
- 162 ~~5.~~ 4. Was the responsible party unresponsive in correcting the  
 163 violation?

164 a. ~~Answer "no"~~ Asses zero (0) points if the violation was corrected  
 165 as soon as the responsible party learned of it.

166 b. ~~Answer "possibly"~~ Asses one (1) point if the violation was  
 167 corrected, or measures were attempted to be implemented, in a less  
 168 timely and cooperative fashion.

169 c. ~~Answer "definitely"~~ Asses two (2) points if the responsible party  
 170 made no attempt to correct the violation or no measures were  
 171 attempted to be implemented to prevent further violation.

172 ~~6.~~ 5. Was the violation a result of improper operation, or inadequate  
 173 maintenance, or inadequate implementation of a required plan that  
 174 addresses stormwater management (e.g., but not limited to,  
 175 temporary erosion and sediment (TESC) plan, stormwater pollution  
 176 prevention plan (SWPPP), permit conditions and/or notes)?

177 a. ~~Answer "no"~~ Asses zero (0) points if the violation was not the  
 178 result of improper operation or inadequate maintenance actions or  
 179 inactions described above.

180 b. ~~Answer "possibly"~~ Asses one (1) point if proper operation or  
 181 actions described above were and/or maintenance was completed but  
 182 a violation still occurred.

183 c. ~~Answer "definitely"~~ Asses two (2) points if the violation was a  
 184 result of improper operation or inadequate maintenance actions or  
 185 inactions described above.

186 ~~7.~~ Did anyone benefit economically from noncompliance?

187 a. ~~Answer "no"~~ Asses zero (0) points if it is clear that no one gained  
 188 an economic benefit.

189 b. ~~Answer "possibly"~~ Asses one (1) point if someone might have  
 190 benefited.

191 c. ~~Answer "definitely"~~ Asses two (2) points if the economic benefit is  
 192 quantifiable.

193 Once the total amount of penalty points is determined, a rating and a  
 194 corresponding surface water fine amount are established (Table 2).

**Table 2. Penalty Points Rating and Corresponding Surface Water Fine Amount**

<b>Rating</b>	1—2	3—4	5—6	7—8	<del>8—9</del> 10	<del>9—11</del> 12	<del>10—13</del> 14
<b>Fine</b>	\$500	\$1,500	\$2,500	\$4,000	\$6,000	\$8,000	\$10,000

195 (d) Self-Reported Violations. The director or designee may reduce or  
196 waive the surface water fine for persons who immediately self-report  
197 violations to the city at 425-587-3900.

198 (e) Assessment of Fines.

199 (1) Fines. The director or designee shall assess the surface water  
200 fine against any responsible party in a written notice that sets forth  
201 the nature of the violation and the determination of the amount of the  
202 fine. The director or designee may elect not to seek surface water  
203 fines if he or she finds that rare and unique circumstances do not  
204 warrant imposition of fines.

205 (2) Repeat Violations. Where the city finds a repeat violation of  
206 Chapter 15.52 has occurred pursuant to Section 1.12.020(l), the fine  
207 for the repeat violation shall be determined by multiplying the surface  
208 water fine amount in Table 2 by the number of violations. For  
209 example, the fine for second time violators is multiplied by two, and  
210 the fine for third time violators is multiplied by three, and so on.

211 (f) Corrective Action and Summary Abatement. In addition to  
212 surface water fines, the city may require the responsible party to take  
213 corrective action to cease violating Chapter 15.52, including, but not  
214 limited to, requiring the responsible party to fully remove pollutants  
215 from private storm system(s) which enter into the municipal storm  
216 system. In the event the responsible party fails to take necessary  
217 corrective action in a timely fashion, the city may take summary  
218 abatement action in accordance with Section 1.12.060(b).

219 (g) Cost Recovery. The director or designee shall assess costs  
220 associated with cleaning or restoring the municipal storm drain system  
221 against any responsible party in a written notice that sets forth the  
222 nature of the violation and the determination of the amount. The  
223 director or designee may elect not to seek costs if he or she finds that  
224 unique circumstances do not warrant such collection.

225 (h) Real Property Owner Liability. Where a violation of Chapter  
226 15.52 has occurred at least in part on private property, and when  
227 more than one person is responsible for fines and/or costs under  
228 subsection (d), (e) and/or (f) of this section, the director or designee  
229 may determine that the owner of the real property where the violation  
230 occurred shall be jointly and severally liable for all of the fines and/or  
231 costs assessed against each person.

232 (i) Notice of Civil Violation and Hearing on Violation. The city may  
233 issue a notice of civil violation to any responsible party who violates  
234 Chapter 15.52 and who fails to pay surface water fines and/or costs of  
235 recovery, and/or costs of abatement, and/or fails to take other  
236 necessary corrective action. The hearing on the notice of civil violation  
237 shall be held in accordance with Section 1.12.050.  
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Section 3. Kirkland Municipal Code Title 15, chapter 15.52 is amended as follows:

**KMC Title 15, Water and Sewage, chapter 15.52 Storm-Water Drainage Surface Water Management**

Section 4. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

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

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2021.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

\_\_\_\_\_  
Kathi Anderson, City Clerk

Approved as to Form:

\_\_\_\_\_  
Kevin Raymond, City Attorney



PUBLICATION SUMMARY  
OF ORDINANCE NO. 4756

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING SURFACE  
WATER MANAGEMENT REGULATIONS.

SECTION 1. Amends Kirkland Municipal Code Section  
1.12.020 related to definitions for code enforcement regulations.

SECTION 2. Amends Kirkland Municipal Code Section  
1.12.200 updating special provisions relating to enforcement of Kirkland  
Municipal Code Chapter 15.52 related to surface water management.

SECTION 3. Amends Kirkland Municipal Code Title 15, chapter  
15.52.

SECTION 5. Provides a severability clause for the ordinance.

SECTION 6. 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 \_\_\_\_\_, 2021.

I certify that the foregoing is a summary of Ordinance 4756  
approved by the Kirkland City Council for summary publication.

\_\_\_\_\_  
Kathi Anderson, City Clerk