



## **CITY OF KIRKLAND**

**Department of Public Works**

**123 FIFTH AVENUE, KIRKLAND, WA 98033 425.587.3800**

**[www.kirklandwa.gov](http://www.kirklandwa.gov)**

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### **MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Ryeann-Marie Tuomisto, Water Quality Program Coordinator  
Kelli Jones, Surface Water Program Supervisor  
Julie Underwood, Director of Public Works

**Date:** April 22, 2021

**Subject:** ORDINANCE TO AMEND SURFACE WATER MANAGEMENT REGULATIONS

### **RECOMMENDATION:**

It is recommended that City Council approve an ordinance amending *Kirkland Municipal Code* chapter 1.12 through approval of the consent calendar.

### **BACKGROUND:**

Staff provided background regarding proposed amendments to the surface water management regulations at the [Council's April 6 Regular Meeting](#). At that meeting, the Council had questions regarding clarifications to the *Code* that are addressed below.

### **Clarification to Proposed Amendments Related to Enforcement of Surface Water Management Codes**

The primary goals of the Illicit Discharge, Detection and Elimination (IDDE) program are to respond to all water quality concerns, provide technical assistance in the field, and to educate people living and working in Kirkland of the surface water regulations and the need and reasons for such regulations.

If there is a violation of the *Code* and the City can identify the violator, then the violator is billed for the costs of correcting the violation with some exceptions. As example, the City does not bill for costs to clean the stormwater system for vehicular accidents that cause surface water violations. But if the identified violator also has been educated in the past about how to avoid such violations, then the City also will assess a fine in addition to the costs of correction.

Below is a summary of the surface water code enforcement process:

1. Notice of Surface Water Fines and Cost Recovery is issued with a deadline. If the issue is resolved before the deadline, the case is closed.

2. Notice of Civil Violation is issued with a Hearing Examiner date. If the issue is resolved before the Hearing date, the case is closed.
3. Hearing is conducted.

In 2020, out of the 266 water quality calls that the City received, 88 were confirmed violations, and 39 of those violations resulted in code enforcement. Six (6) code enforcement cases (15%) went to Hearing (some of these cases were carried over from 2019).

Proposed amendments to the Kirkland Municipal Code will not affect this current process.

**1) Staff proposed removing criteria #4 and #7 from the penalty matrix. #4 relates to "willful and knowing violations," and #7 relates to whether the violator received an "economic benefit from noncompliance."**

Removal of criteria #4. Council expressed concern that removal of criteria #4 leaves first-time flagrant violators unpunished. The City's experience has been that every violator claims their actions were a "mistake" or they did not know what they were doing was wrong. Even though staff has suspected willful and knowing violations in the past, it has not been able to prove this criterion when the matter goes to the Hearing Examiner. Thus, staff determined it was not an effective tool for compelling compliance.

If a violation continues after staff provides education and assistance, then it considers it a "willful and knowing violation." Additionally, under the City's *Code*, the violator also is a "repeat violator." For repeat violators, their fine is increased automatically by the number of prior violations on their record. For example, the fine for a second violation is multiplied by two; the fine for a third violation is multiplied by three, etc.

Removal of criteria #7. Under a common interpretation of this criterion, every violator obtains some economic benefit from noncompliance. Perhaps it is a small benefit, such as saving the cost of an extra hose that would allow water to be discharged to a place and in a manner that is compliant with the *Code* (whereas use of a shorter hose, which discharges in the middle of the site that washes mud and debris into the street, is a violation). In other situations, the savings can be large, such as saving the cost of renting a vacuum truck for a day or more. But as with criteria #4, staff has not been able to prove criteria #7 when such a matter goes to the Hearing Examiner. The Hearing Examiner often opines these proposed "cost savings" are too subjective to be considered a code violation.

In sum, staff's goal for removing criteria #4 and #7 is to make the penalty matrix more objective and less subject to challenge, so as to encourage violators to pay their fines and to minimize the extra staff time and resources to appear before the Hearing Examiner. It is expensive for staff to take a matter to the Hearing Examiner, and staff's experience has been that the Hearing Examiner routinely will strike criteria #4 and #7, so it has not been an effective use of staff resources.

- 2) Criteria question #5 is "Improper Operation or Inadequate Maintenance." Staff proposed amending the criteria question to state, "Improper operation, inadequate maintenance, or inadequate implementation of a required plan that addresses stormwater management (e.g., but not limited to temporary erosion and sediment control (TESC) plan, stormwater pollution prevention plan (SWPPP), permit conditions and notes)."**

Council asked for clarification of whether the terms "Improper Operation," "Inadequate Maintenance," and "Improper Implementation" are all associated with a "required plan." Yes, the intention of this criteria question is to determine if the violation was a result of failure to properly operate, maintain, or implement an already completed Required Plan.

"Required Plan" is now included in the definitions section for clarification and to simplify the matrix. The matrix language was also modified for clarification.

- 3) Criteria question #5 - References to "stormwater" and "surface water."**

Council asked for clarification of whether use of the term "stormwater" was appropriate in this criteria question, or if it should be "surface water." After further consideration, staff determined that both "stormwater" and "surface water" should be included in this criteria question to encompass all water that falls from the sky and runs off-site to the nearest wetland, stream, or lake.

The *Kirkland Municipal Code* requires that the City adopt definitions from the King County Surface Water Design Manual (KCSWDM). According to the KCSWDM, the definition of "stormwater" is "water produced during precipitation or snowmelt, which runs off, soaks into the ground, or is dissipated through evapotranspiration. Stormwater that runs off or soaks into the ground ultimately becomes surface water or groundwater." The definition of "Surface water" is "water that exists on land surfaces before, during, and after stormwater runoff occurs and includes, but is not limited to, the water found on ground surfaces and in drainage facilities, rivers, streams, springs, seeps, ponds, lakes, wetlands, and Puget Sound. It also includes shallow groundwater."

Therefore, criteria question #5 has been changed to read, "Improper Operation, Inadequate Maintenance, or Inadequate Implementation of a Required Plan that Addresses Stormwater and Surface Water Management (including, but not limited to, a temporary erosion and sediment control (TESC) plan, stormwater pollution prevention plan (SWPPP), permit conditions and/or notes).

- 4) Staff proposed to exclude the City of Kirkland from the definition of "person."**

The proposed change to exclude the City of Kirkland from the definition of "person" stems from issues surrounding contract language with City projects and the City becoming a "repeat violator" and increasing the fines the amount of times the City was deemed a "violator."

Removal of "City" from the definition of "person" does not exempt the City from required regulations. If it is determined the City violated the Kirkland Municipal Code, staff will follow all required processes, including promptly responding to the issue, thoroughly performing spill clean-up measures, and reporting and complying with all state and federal regulations.

**NEXT STEPS:**

This staff report has attempted to answer for the record questions that the Council posed during its April 6 meeting. Staff continues to recommend adoption of the proposed amendments to KMC chapter 1.12. If the Council concurs, then those amendments will be adopted via approval of the ordinance on the Consent Calendar, and it will go into effect five days after passage and publication.

Attachment A: Proposed Ordinance

Attachment B: Publication Summary

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  
11

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.  
18

19 NOW, THEREFORE, the City Council of the City of Kirkland do  
20 ordain as follows:  
21

22 Section 1. Kirkland Municipal Code Section 1.12.020 is amended  
23 to read as follows:  
24

25 **1.12.020 Definitions.**  
26

27 As used in this chapter, unless a different meaning is plainly required:  
28

29 (a) "Abate" means to repair, replace, remove, destroy or otherwise  
30 remedy a condition which constitutes a civil violation by such means, in  
31 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 use  
44 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 the  
51 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 chapter  
55 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, and  
60 includes but is not limited to owner(s), lessor(s), tenant(s), vendor(s),  
61 contractor(s), or other person(s) entitled to control, use and/or occupy  
62 property where a civil violation occurs. For violations of the city sign  
63 regulations, this definition includes, but is not limited to, sign  
64 installers/posters, sign owners, and any other persons who cause or  
65 participate in the placement of a sign in a manner that constitutes a civil  
66 violation. For violations of city tree regulations, this definition includes  
67 any person who caused or participated in the removal of a tree in a  
68 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 the  
81 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 any  
88 location in the city by the same person or responsible party for which  
89 compliance previously has been sought or a notice of civil violation has  
90 been issued.

91 (m) "Required Plan" means a city-required plan that addresses  
92 Stormwater or Surface Water Management including, but not limited to,  
93 a temporary sediment and erosion control (TESC) plan, stormwater  
94 pollution prevention plan (SWPPP), permit conditions and/or notes.

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

103 ~~(n)~~(o) "Violation" means an act or omission contrary to a city  
104 development regulation including an act or omission at the same or  
105 different location by the same person and including a condition resulting  
106 from such act or omission.

107 Section 2. Kirkland Municipal Code Section 1.12.200 is amended  
108 to read as follows:

109  
110 **1.12.200 Special provisions relating to enforcement of Chapter**  
111 **15.52 (Surface Water Management).**  
112

113 (a) General Requirements. This section applies to violations of Chapter  
114 15.52, including illicit discharges and connections that discharge into the  
115 municipal storm drain system and/or surface and ground waters.  
116 Enforcement shall be conducted in accordance with procedures set forth  
117 in this chapter.

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

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

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

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

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

128 (3) Fines for a violation shall be determined using the surface water  
129 enforcement matrix (Table 1) and administered per violation.

**Table 1. Surface Water Enforcement Matrix**

<b>Enforcement Evaluation Criteria</b>	<b>No <u>Zero</u> (0) points}</b>	<b>Possibly <u>One</u> (1) point}</b>	<b>Definitely <u>Two</u> (2) points}</b>
1) Perceived Public Health Risk?			
2) Environmental Damage?			
3) <del>Impacting</del> <u>Discharge into</u> Municipal Storm Drain System?			
4) <del>Willful or Knowing</del> Violation?			
5 4) Unresponsive in Correcting Action?			
6-5) <u>Was the violation a result of a responsible party(s) failure to properly operate, maintain, or implement a Required Plan ? Improper Operation or Inadequate Maintenance?</u>			
7) <del>Economic Benefit to</del> Noncompliance?			

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

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

- 168 a. ~~Answer "no"~~ Assess zero (0) points if the violation was corrected  
169 as soon as the responsible party learned of it.
- 170 b. ~~Answer "possibly"~~ Assess one (1) point if the violation was  
171 corrected, or measures were attempted to be implemented, in a less  
172 timely and cooperative fashion.
- 173 c. ~~Answer "definitely"~~ Assess two (2) points if the responsible party  
174 made no attempt to correct the violation or no measures were  
175 attempted to be implemented to prevent further violation.
- 176 6 5. Was the violation a result of a responsible party(s) failure to  
177 properly operate, maintain, or implement a Required Plan? ~~improper~~  
178 ~~operation or inadequate maintenance?~~
- 179 a. ~~Answer "no"~~ Assess zero (0) points if the violation was not the  
180 result of ~~improper operation or inadequate maintenance~~ actions or  
181 inactions described above.
- 182 b. ~~Answer "possibly"~~ Assess one (1) point if proper operation or actions  
183 described above were and/or maintenance was completed but a  
184 violation still occurred.
- 185 c. ~~Answer "definitely"~~ Assess two (2) points if the violation was a result  
186 of ~~improper operation or inadequate maintenance~~ actions or inactions  
187 described above.
- 188 7. ~~Did anyone benefit economically from noncompliance?~~
- 189 a. ~~Answer "no" if it is clear that no one gained an economic benefit.~~
- 190 b. ~~Answer "possibly" if someone might have benefited.~~
- 191 c. ~~Answer "definitely" if the economic benefit is quantifiable.~~
- 192 Once the total amount of penalty points is determined, a rating and a  
193 corresponding surface water fine amount are established (Table 2).

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

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

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

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

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

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

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

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

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

237  
 238 Section 3. If any provision of this ordinance or its application to  
 239 any person or circumstance is held invalid, the remainder of the  
 240 ordinance or the application of the provision to other persons or  
 241 circumstances is not affected.  
 242

243        Section 4. This ordinance shall be in force and effect five days  
244 from and after its passage by the Kirkland City Council and publication  
245 pursuant to Section 1.08.017, Kirkland Municipal Code in the summary  
246 form attached to the original of this ordinance and by this reference  
247 approved by the City Council.  
248

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

251        Signed in authentication thereof this \_\_\_\_\_ day of  
252 \_\_\_\_\_, 2021.  
253

\_\_\_\_\_  
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 surface  
water management, Kirkland Municipal Code Chapter 15.52.

SECTION 3. Provides a severability clause for the ordinance.

SECTION 4. Authorizes publication of the ordinance by  
summary, which summary is approved by the City Council pursuant to  
Section 1.08.017 Kirkland Municipal Code and establishes the effective  
date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to  
any person upon request made to the City Clerk for the City of Kirkland.  
The Ordinance was passed by the Kirkland City Council at its meeting  
on the \_\_\_\_\_ day of \_\_\_\_\_, 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