

ORDINANCE NO. 4281

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING, AND LAND USE AND AMENDING PORTIONS OF THE FOLLOWING CHAPTERS OF ORDINANCE 3719 AS AMENDED, THE KIRKLAND ZONING ORDINANCE: CHAPTER 1—USERS GUIDE, CHAPTER 5—DEFINITIONS, CHAPTER 95—TREE MANAGEMENT AND REQUIRED LANDSCAPING, CHAPTER 115—MISCELLANEOUS USE DEVELOPMENT AND PERFORMANCE STANDARDS, CHAPTER 117--PERSONAL WIRELESS FACILITIES, CHAPTER 141--SHORELINE ADMINISTRATION, CHAPTER 162—NONCONFORMANCE, CHAPTER 170 CODE ENFORCEMENT.

Whereas, the City Council has received recommendations from the Kirkland Planning Commission to amend certain sections of the text of the Kirkland Zoning Code, Ordinance 3719 as amended, all as set forth in that certain report and recommendation of the Planning Commission dated November 22, 2010 and bearing Kirkland Department of Planning and Community Development File No. ZON10-00013; and

Whereas, prior to making said recommendation, the Kirkland Planning Commission, following notice thereof as required by RCW 35A.63.070, on November 4, 2010, held a public hearing, on the amendment proposals and considered the comments received at said hearing; and

Whereas, pursuant to the State Environmental Policy Act (SEPA), there has accompanied the legislative proposal and recommendation through the entire consideration process, a SEPA Addendum to Existing Environmental Documents issued by the responsible official pursuant to WAC 197-11-625; and

Whereas, in regular public meeting the City Council considered the environmental documents received from the responsible official, together with the report and recommendation of the Planning Commission;

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

Section 1. Zoning Code text amended: The following specified sections of the text of Ordinance 3719 as amended, the Kirkland Zoning Ordinance is hereby amended to read as follows:

As set forth in Attachment A attached to this ordinance and incorporated herein by reference.

Section 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by

any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. To the extent the subject matter of this ordinance, pursuant to Ordinance 2001, is subject to the disapproval jurisdiction of the Houghton Community Council, this ordinance shall become effective within the Houghton Community Municipal Corporation only upon approval of the Houghton Community Council or the failure of said Community Council to disapprove this ordinance within 60 days of the date of the passage of this ordinance.

Section 4. Except as provided in Section 3, this ordinance shall be in force and effect on April 1, 2011 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.

Section 5. A complete copy of this ordinance shall be certified by the City Clerk, who shall then forward the certified copy to the King County Department of Assessments.

Passed by majority vote of the Kirkland City Council in open meeting this 4th day of January, 2011.


Signed in authentication thereof this 4th day of January, 2011.


MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney

**ATTACHMENT A
KIRKLAND ZONING CODE CHANGES**

**KIRKLAND ZONING CODE AMENDMENTS
FOR CODE ENFORCEMENT
FILE ZON10-00013**

How to read this document:

- Text that is covered by a strike-through (~~abc~~) is existing text currently contained in the Zoning Code that is to be deleted.
 - Text that is underlined (abc), with the exception of section headings, is new text that is to be added.
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Click here to view adopted ordinances that have not yet been inserted into the Zoning Code as well as pending regulations under consideration.

Zoning Code Interpretations

Chapter 1 – User Guide

Chapter 5 – Definitions
(No change until)

Chapter 170 – Code ~~Enforcement~~Administration

(No further changes)

Chapter 1 – USER GUIDE

(No change until)

1.10.14. Junk and Junk Yards – Are you interested in the City’s regulations on junk and junk yards? If so, see ~~KZC 115.70, Junk and Junk Yards Prohibited~~KMC 21.41.308 Rubbish, junk and garbage.

(No further changes)

Chapter 5 – DEFINITIONS

(No change until)

~~.447 **Junk**—Old or scrap copper; brass; rope; rags; batteries; paper; trash; rubber debris; wastes; machinery; scrap wood; junked, dismantled or wrecked automobiles, or parts thereof; iron; steel; and other old or scrap ferrous or nonferrous material.~~

~~.448 **Junk Yard**—A property or place of business which is maintained, operated, or used for storing, keeping, buying, selling, or salvaging junk.~~

(No further changes)

Chapter 95 – TREE MANAGEMENT AND REQUIRED LANDSCAPING

(No change until)

95.21 Tree Pruning

1. **Tree Pruning of Street Trees.** It is the responsibility of the abutting property owner to maintain street trees abutting their property, which may include pruning, watering, and mulching. In order to prune, trim, modify, or alter a street tree, the abutting property owner shall apply for a permit by filing a written application with the City. Pruning shall conform to the most recent version of the American National Standards Institute (ANSI) A300 Part 1 – 2001 pruning standards or as outlined in an approved Utility Vegetation Management Plan. The City reserves the right to have City or utility crews perform routine pruning and maintenance of street trees.
2. **Tree Pruning on Private Property.** A permit is not required to prune trees on private property. Pruning which results in the removal of at least half of the live crown will be considered tree removal and subject to the provisions in KZC 95.23.

Tree topping is not allowed. If a tree required by this chapter is smaller than six inches in diameter and is topped, it must be replaced pursuant to the standards in ~~KZC 95.55(8)(b)~~KMC 1.12. If a tree six inches or larger in diameter is topped, the owner must have a qualified professional develop and implement a five-year restoration pruning program.

(No further changes until)

95.55 Enforcement and Penalties

1. Upon determination that there has been a violation of any provision of this section, the City may pursue code enforcement and penalties in

~~accordance with the provisions of KMC 1.12, Code Enforcement. Intent. These enforcement and penalty provisions have several purposes. First, they are intended to discourage damage or removal of significant trees above and beyond what is permitted under this chapter. Second, these enforcement and penalty provisions are intended to provide complete and effective restoration of areas in which violations of this chapter occur. Finally, these regulations are intended to provide a clear and efficient process for addressing violations of this chapter.~~

~~The City may utilize one or more of several remedies when responding to violations of this chapter. In almost all cases where a violation has occurred, the City will issue a civil citation that describes the nature of the violation, the actions necessary to remedy the violation, and the amount of any civil penalty, among other things. If the acts that constitute a violation appear to be ongoing, the City may also issue a notice of cease and desist. Failure to adhere to a notice to cease and desist will result in imposition of additional civil penalties. If there is a pending development or building permit, the City may also issue a stop work order or withhold issuance of permit approval or a certificate of occupancy. Finally, additional fines may be imposed if a violator does not follow through in a timely manner with restoration work or other compliance issues.~~

- ~~2. General Requirements. Enforcement shall be conducted in accordance with procedures set forth in Chapter 170 KZC. Special enforcement provisions related to tree conservation are set forth below. To the extent there is a conflict between the provisions of this section and Chapter 170 KZC, this section shall control.~~

~~For code enforcement provisions regarding street trees and trees located on City property see Chapter 19.36 KMC.~~

- ~~3. Authority. It shall be the duty of the Planning Official to administer the provisions of this chapter. The Planning Official shall have authority to enforce and carry out the provisions of this chapter.~~
- ~~4. Cease and Desist. The Planning Official may issue a notice to cease and desist using the procedure set forth in KZC 170.30 if the Planning Official finds that a violation of this code has occurred. Continued illegal tree activity following issuance of a cease and desist from the City for the tree activity shall result in fines of \$1,000 per day of continued activity.~~
- ~~5. Stop Work Order. If a violation of this chapter or an approved Tree Retention Plan occurs on property on which work is taking place pursuant to a City of Kirkland development or building permit, the Building Official may suspend some or all of the work as appropriate through issuance of a stop work order. The Building Official shall remove the stop work order~~

~~when the City determines that the violation has been corrected or when the City has reached an agreement with the violator regarding rectification of the violation. Any stop work order issued under this section may be appealed using the procedures set forth in Chapter 21.06 KMC.~~

~~6. Civil Citation. The City's Code Enforcement Officer shall notify a person who violates this chapter by issuance of a civil citation. The civil citation shall be in writing, and issued by certified mail with return receipt requested, or by personal service. The civil citation shall contain the following:~~

~~a. The name and address of the property owner or other person to whom the civil citation is directed;~~

~~b. The street address or description sufficient for identification of the land upon which the violation has occurred or is occurring;~~

~~c. A description of the violation and a reference to the provisions of this chapter that have been violated;~~

~~d. A statement of the restoration action required to be taken to correct the violation as determined by the Planning Official;~~

~~e. A statement of the civil penalty incurred for each violation;~~

~~f. A statement that the person to whom the civil citation is issued must correct the violation through restoration described in subsection (8) of this section and may pay the civil penalty or may appeal the civil citation as provided in this section.~~

~~7. Civil Penalty:~~

~~a. A person who fails to comply with the requirements of this chapter or the terms of a permit issued hereunder, who undertakes an activity regulated by this chapter without obtaining a permit, or fails to comply with a cease and desist or stop work order issued under this chapter shall also be subject to a civil penalty as set forth in Table 95.55.1. Each unlawfully removed or damaged tree shall constitute a separate violation.~~

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

~~c. The amount of the penalty shall be assessed in accordance with Table 95.55.1. The Planning Official may elect not to seek penalties if the~~

~~Planning Official determines that the circumstances do not warrant imposition of civil penalties in addition to restoration.~~

~~Table 95.55.1
—Penalties~~

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

~~8. Tree Restoration:~~

~~a. Violators of this chapter or of a permit issued thereunder shall be responsible for restoring unlawfully damaged areas in conformance with a plan, approved by the Planning Official, which provides for repair of any environmental and property damage, and restoration of the site; and which results in a site condition that, to the greatest extent practical, equals the site condition that would have existed in the absence of the violation(s). In cases where the violator intentionally or knowingly violated this chapter or has committed previous violations of this chapter, restoration costs may be based on the City appraised tree value of the subject trees in which the violation occurred, utilizing the industry standard trunk formula method in the current edition of Guide for Plant Appraisal. If diameter of removed tree is unknown, determination of the diameter size shall be made by the Planning Official by comparing size of stump and species to similar trees in similar growing conditions. The amount of costs above the approved restoration plan will be paid into the City forestry account.~~

~~b. Restoration Plan Standards. The restoration plan shall be in accordance to the following standards:~~

~~1) The number of trees required to be planted is equal to the number of tree credits of illegally removed trees according to Table 95.33.1.~~

~~2) The minimum size for a tree planted for restoration is 12-foot tall conifer and three-inch caliper deciduous or broadleaf evergreen~~

~~tree. The City may approve smaller restoration tree sizes at a higher restoration ratio, provided the site has capacity for the additional trees and the results of restoration at a higher restoration ratio is as good or better than at the normal ratio. The smallest allowable alternatives to the normal restoration requirements shall be two eight-foot conifers for one 12-foot conifer or two two-inch caliper deciduous for one three-inch caliper deciduous tree.~~

~~3) In the event the violators cannot restore the unlawfully removed or damaged trees, the violators shall make payment to the City forestry account. Unless otherwise determined to base the restoration costs on appraised value, the amount paid will be the City's unit cost for a restoration tree multiplied by the number of outstanding tree credits. The City's unit cost is based on the current market cost of purchase, installation and three-year maintenance for a minimum-sized tree for restoration.~~

~~4) The restoration plan shall include a maintenance plan and an agreement or security to ensure survival and maintenance of restoration trees for a three-year period unless the violation was on a site with an approved tree plan, in which case the maintenance period is five years.~~

~~9. Failure to Restore or Pay Fines.~~

~~a. Prohibition of Further Approvals. The City shall not approve any application for a subdivision or any other development permit or approval, or issue a certificate of occupancy for property on which a violation of this chapter has occurred until the violation is cured by restoration or other means accepted by the Planning Official and by payment of any penalty imposed for the violation.~~

~~b. Fines. A property owner or occupant who fails to restore or otherwise cure property on which a violation of this chapter has occurred shall be assessed a fine of \$100.00 per day for each day that restoration is incomplete. Prior to assessing fines under this subsection, the City shall issue a written notice to the property owner or that restoration has not been completed. The notice shall include the following information: (1) a description of the nature of the violation; (2) a description of what actions are required to bring the property into compliance; and (3) a date by which compliance shall be required (the "compliance date"). The compliance date shall be no less than 30 days from the date the notice is served on the property owner or occupant. If the property owner or occupant does not, in the determination of the City, bring the property into compliance by the compliance date, then the City may~~

~~issue an order imposing \$100.00 per day fines at any time after the compliance date. The fines shall continue to accrue until the violation has been certified to be corrected by the Planning Department. The property owner or occupant may appeal the order imposing fines to the Hearing Examiner using the procedures set forth in subsection 10 of this section.~~

~~10. Appeal to Hearing Examiner.~~

- ~~a. A person to whom a civil citation or order imposing fines is directed may appeal the civil citation, including the determination that a violation exists or the amount of any monetary penalty imposed, to the Hearing Examiner.~~
- ~~b. A person may appeal the civil citation or order imposing fines by filing a written notice of appeal with the Department of Planning and Community Development within 14 calendar days of the date of service of the civil citation or order imposing fines.~~
- ~~c. Fines that accrue on a daily basis shall not be imposed while an appeal is pending unless the Hearing Examiner determines that the appeal is frivolous or imposed solely for the purpose of delay.~~
- ~~d. If both a civil citation and an order to cease and desist have been issued in the same case, and both the civil citation and the order to cease and desist have been appealed, the appeals shall be consolidated for hearing.~~
- ~~e. The office of the Hearing Examiner shall give notice of the hearing to the appellants at least 17 calendar days prior to the hearing.~~
- ~~f. The Hearing Examiner shall conduct a hearing on the appeal pursuant to the rules of procedure provided for in the Administrative Procedures Act (Chapter 34.05 RCW) and in accordance with any rules for hearings promulgated by the Hearing Examiner. 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.~~

~~11. Hearing Examiner Decision.~~

- ~~a. 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 civil citation, with or without written conditions.~~

- ~~b. In the event that the Hearing Examiner determines that a violation has occurred, the Hearing Examiner shall also consider the following in making his or her decision: (1) whether the appeal is frivolous or intended to delay compliance; (2) whether the appellant exercised reasonable and timely effort to comply with applicable development regulations; and (3) any other relevant factors.~~
- ~~c. The Hearing Examiner shall mail a copy of his or her decision to the appellant, by certified mail, postage prepaid, return receipt requested.~~
- ~~d. The decision of the Hearing Examiner may be reviewed in King County Superior Court using the standards set forth in RCW 36.70C.130. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the Hearing Examiner (see Chapter 36.70C RCW for more information).~~

(No further changes)

CHAPTER 115 – MISCELLANEOUS USE DEVELOPMENT AND PERFORMANCE STANDARDS

(No change until)

Section 115.65 Home Occupations

6. Enforcement – Upon determination that there has been a violation of any provision of this section, the City may pursue code enforcement in accordance with the provisions of KMC Chapter 170KZC 1.12, Code Enforcement.

~~115.70 Junk and Junk Yards Prohibited~~

~~It is a violation of this code to accumulate junk or for a property owner or the person in control of property to allow junk to accumulate on the subject property. In addition, a junk yard is not permitted in the City.~~

(No further changes)

Chapter 117 PERSONAL WIRELESS FACILITIES

(No change until)

117.125 Violations and City Remedies

Any person who violates any of the provisions of this chapter shall be subject to the provisions of KMC Chapter 170-KZC 1.12, Code Enforcement. In addition to fines, the City shall have the right to seek damages and injunctive relief for any and all violations of this chapter and all other remedies provided at law or in equity.

(No further changes)

Chapter 141 – SHORELINE ADMINISTRATION

(No change until)

141.80 Enforcement Authority.

1. WAC Chapter 173-27 contains enforcement regulations, including authority for the city to issue regulatory orders to enforce the Shoreline Management Act and the shoreline master program. In addition, the city shall have any and all other powers granted to or devolving upon municipal corporations to enforce ordinances, resolutions, regulations, and other laws within its territorial limits. Upon determination that there has been a violation of any provision of the city's shoreline regulations, the City may pursue code enforcement and penalties in accordance with the provisions of KMC 1.12, Code Enforcement.

(No further changes)

Chapter 162 – NONCONFORMANCE

(No change until)

162.20 Abatement of Nonconformance That Was Illegal When Initiated

1. General – Except as specified in subsection (2) of this section, any nonconformance that was illegal when initiated must immediately be brought into conformance with this chapter. The City may, using the provisions of KMC Chapter 170-KZC1.12, immediately abate any nonconformance that was illegal when initiated.

(No further changes until)

162.25 Immediate Compliance with Certain Provisions Required

1. General – Regardless of any other provision of this chapter, the following nonconformances must be immediately brought into conformance with the applicable provisions of this code:

...

i. Nonconformance with the provisions in ~~Chapter 115 KZC~~ KMC 21.41 regarding junk in residential zones.

2. Abatement – The City may immediately abate any nonconformance listed in KZC 162.25(1) using the provisions of ~~KZC 170.25 through 170.40~~ KMC 1.12, or any other abatement process lawfully available to the City.

(No further changes)

Chapter 170 – CODE ENFORCEMENT ADMINISTRATION

- 170.05 User Guide
- 170.10 Permits Issued by Building Official – Responsibility Prior to Issuance of Permit
- 170.15 Permits Issued by Building Official – Certificate of Occupancy
- 170.20 Code Enforcement Officer – Duty To Investigate
- ~~170.25 Violation of This Code~~
- ~~170.30 Code Enforcement Officer – Order To Cease Activity~~
- ~~170.35 Code Enforcement Officer – Notice of Violation~~
- ~~170.40 Code Enforcement Officer – Notice of Civil Infraction~~
- ~~170.42 Failure To Satisfy Penalty~~
- 170.45 Variance, Permit, Decision or Discretionary Approval – General
- 170.50 Variance, Permit, Decision, or Discretionary Approval – Voiding
- 170.55 No Personal Liability for Acts or Omissions
- 170.60 Interpretations of This Code – General
- 170.65 Interpretations of This Code – Appeal
- 170.70 Conflict of Provisions
- 170.75 Easement Agreements Approved by the City Attorney

170.05 User Guide

This chapter contains a variety of provisions generally pertaining to the administration and enforcement of this code. Specifically, this chapter contains provisions in the following areas:

1. Code administration.
2. Code enforcement.
- ~~3. Penalties for code violation.~~
4. Status of discretionary decision.
5. Liability of employees and others.
6. Code interpretations and appeals.

- 76. Conflict of provisions.
- 87. Recording of easements.

170.10 Permits Issued by Building Official – Responsibility Prior to Issuance of Permit

1. General – The Building Official may not issue a permit to conduct any activity or to erect or alter any structure that does not conform to this code.
2. Required Information – The Building Official shall distribute to each applicant for a permit issued by that Official a list, prepared by the Planning Official, of all of the information and renderings required by this code.
3. Responsibility of Building Official – Upon receiving an application for any permit that is not exempt under subsection (7) of this section, the Building Official shall send the application and all relevant information to the Planning Department. The Building Official may not issue the permit until the permit application has been signed by the Planning Official.
4. Responsibility of the Planning Official – Upon receiving an application for a permit routed from the Building Official, the Planning Official shall promptly review it and make any necessary field inspection to determine whether the proposed development or activity complies with this code.
5. Additional Information – The Planning Official may require the applicant to provide any information or renderings required by this code, or any other information or renderings that are reasonably necessary to determine if the proposed development or activity complies with the provisions of this code.
6. Authorization by Planning Official – The Planning Official shall sign the permit application if the proposed development or activity conforms to the provisions of this code.
7. Permits Exempted from Review by the Planning Director – The Planning Director may specifically exempt categories of permits issued by the Building Official from the Planning Department review requirements of this section. The Building Official shall review applications for exempted permits for compliance with this code.

170.15 Permits Issued by Building Official – Certificate of Occupancy

1. General – It is unlawful to occupy a building or conduct a use requiring a certificate of occupancy unless the Planning Official has approved the certificate of occupancy for that building or use.

2. Responsibility of Building Official – Upon receipt of a request to issue a certificate of occupancy, the Building Official shall promptly notify the Planning Official of the request. The Building Official may not issue a certificate of occupancy until he/she receives written approval from the Planning Official.
3. Responsibility of the Planning Official – Upon receiving notice from the Building Official of a request for a certificate of occupancy, the Planning Official shall promptly review the request, and if necessary, conduct a field inspection to determine if the structure or use conforms to this code.
4. Issuance of the Planning Official Approval – The Planning Official shall sign and forward to the Building Department the Certificate of Occupancy if the building or use conforms to this code.

170.20 Code Enforcement Officer—Duty To Investigate

- ~~1. General—The Code Enforcement Officer shall, either upon a complaint or on his/her own initiative, investigate potential violations of this code. For code enforcement procedures and penalties for violations of this code see KMC 1.12.~~
- ~~2. Entrance on Private Property—The Code Enforcement Officer may enter upon private property to investigate potential violations of this code if he/she has a good faith belief that a violation exists or is occurring on the property. Before entering upon private property, the Code Enforcement Officer shall present his/her credentials to the owner or person in possession or charge of the property and demand entry. If entry is refused, the Code Enforcement Officer may use every lawful means and remedy to obtain entry.~~

~~170.25 Violation of This Code~~

- ~~1. General—It is a violation for any person to do or cause any of the following to be done contrary to this code, and for the property owner to permit any of the following to be done contrary to this code:~~
 - ~~a. Construct, in any way alter, or move any improvement.~~
 - ~~b. Engage in any activity.~~
 - ~~c. Use or occupy any structure or land.~~
 - ~~d. Conduct any use.~~
 - ~~e. Create any conditions.~~

~~It is also a violation for any person to fail to perform any activity or obligation required by this code. Violation of a provision of this code is a civil infraction for which a monetary penalty may be imposed under this chapter.~~

- ~~2. Monetary Penalty—The amount of the monetary penalty per day or portion thereof for each violation is as follows:
 - a. First violation: \$100.00;
 - b. Second violation: \$200.00;
 - c. Third violation: \$300.00;
 - d. Additional violation in excess of three: \$500.00.~~
- ~~3. Continued Duty To Correct—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 applicable department director.~~
- ~~4. Other Legal Remedies—Nothing in this chapter limits the right of the City to pursue other lawful criminal, civil, or equitable remedies to abate, discontinue, or correct unlawful acts under or in violation of this code.~~

~~170.30 Code Enforcement Officer—Order To Cease Activity~~

- ~~1. General—If the Code Enforcement Officer determines that any activity being conducted or any improvement being erected or altered:
 - a. Does not conform to the code, and
 - b. Such activity (i) involves use of noise emitting heavy construction equipment or land surface modification, or (ii) poses an immediate threat to the safety, repose or right of quiet enjoyment of neighboring property owners, or to the general public,he/she may issue an order to cease activity.~~
- ~~2. Posting and Notice—The Code Enforcement Officer shall prominently post this Order on the subject property 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 to be erected or altered.~~
- ~~3. Effect—When an order to cease activity has been posted on the subject property, 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 the Code Enforcement Officer has removed the posted copy of the order and issued written authorization for the activity or work to be continued. If an order to cease activity is violated, the Code Enforcement Officer may issue a notice of civil infraction under KZC 170.40 and need not first issue a notice of violation.~~

- ~~4. Appeal — An order to cease activity may be appealed in like manner as a notice of civil infraction to the Hearing Examiner under the provisions of KZC 170.40. If a notice of civil infraction has also been issued and appealed, the appeals shall be consolidated for hearing.~~

~~170.35 Code Enforcement Officer — Notice of Violation~~

- ~~1. General — If the Code Enforcement Officer determines that any activity, condition, structure, or use exists that does not conform to this code, 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; and~~
 - ~~b. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and~~
 - ~~c. A description of the violation and a reference to that provision or provisions of this code being violated; and~~
 - ~~d. A statement of the action required to be taken to correct the violation as determined by the applicable department director and a date or time by which correction is to be completed, which date shall be not less than seven days after the date of issuance of the notice of violation; and~~
 - ~~e. A statement that a monetary penalty in an amount per day for each violation as specified by KZC 170.25 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.~~~~
- ~~2. Notice to Occupant and Owner — The Code Enforcement Officer shall:
 - ~~a. Leave a copy of this notice with the occupant or person in charge of the property or post it in a conspicuous place on the subject property; and~~~~

- ~~b. Send a copy of the notice by certified mail to the owner of the subject property.~~
- ~~3. Extension — Upon written request received prior to the correction date or time, the Code Enforcement Officer may extend the date set for correction for good cause. The Code Enforcement Officer may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible by the date established as good cause.~~

~~170.40 Code Enforcement Officer — Notice of Civil Infraction~~

- ~~1. General — The Code Enforcement Officer may cause a notice of civil infraction to be issued in either of the following circumstances:
 - ~~a. There is a violation of a posted order to cease activity.~~
 - ~~b. If, after this time specified in the notice of violation, the activity, conditions, structure, or use cited in the notice of violation still does not conform to this code.~~~~
- ~~2. Issuance
 - ~~a. The notice of civil infraction will be issued to the owner of the property, the occupant, or person in charge of the property and/or any other person causing or allowing the activity, conditions, structure or use to exist or occur.~~
 - ~~b. Notwithstanding the provisions of KZC 170.30 and 170.35, the Code Enforcement Officer may issue a notice of civil infraction without having issued a notice of violation or order to cease activity when a repeated violation occurs within a six month period of time.~~
 - ~~c. 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.~~~~
- ~~3. Content — The Code Enforcement Officer shall include the following in the notice of civil infraction:
 - ~~a. The name and address of the property owner or other persons to whom the notice of civil infraction is directed; and~~
 - ~~b. 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; and~~~~

- ~~c. A description of the violation and a reference to that provision or provisions of this code which has been violated; and~~
 - ~~d. A statement that the monetary penalty in the amount per day for each violation as specified in KZC 170.25 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~~
 - ~~e. 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 this section.~~
- ~~4. Service of Notice—The Code Enforcement Officer 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.~~
- ~~5. Appeal to Hearing Examiner~~
- ~~a. 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.~~
 - ~~b. A person may appeal the notice of civil infraction by filing a written notice of appeal with the Department of Planning and Community Development within seven calendar days from the date of service of the notice of civil infraction.~~
 - ~~c. 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.~~
 - ~~d. The hearing before the Hearing Examiner shall be conducted as follows:~~

- ~~1) The office of the Hearing Examiner shall give notice of the hearing before the Hearing Examiner to the appellant 17 calendar days before such hearing.~~
- ~~2) 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.~~

~~6. Action of Hearing Examiner~~

- ~~a. 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 violation with or without written conditions.~~
- ~~b. The Hearing Examiner shall consider the following in making his/her determination:
 - ~~1) Whether the intent of the appeal was to delay compliance, or~~
 - ~~2) Whether the appeal is frivolous, or~~
 - ~~3) 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~~
 - ~~4) Whether the appellant exercised reasonable and timely effort to comply with applicable development regulations, or~~
 - ~~5) Any other relevant factors.~~~~

~~7. Notice of Decision — The Hearing Examiner shall mail a copy of his decision to the appellant by certified mail, postage prepaid, return receipt requested.~~

~~8. Judicial Review — The decision of the Hearing Examiner may be reviewed pursuant to the standards set forth in RCW 36.70C.130 in King County Superior Court. The land use petition must be filed within 21 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.~~

~~9. Collection of Monetary Penalty~~

- ~~a. 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 this section, within seven calendar days of the Hearing Examiner's decision.~~
- ~~b. 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.~~
- ~~c. In the event of failure to appear at a hearing provided in this section, the Hearing Examiner shall assess the monetary penalty prescribed and a penalty of \$25.00.~~
- ~~d. In the event of a conflict between this chapter and any other provision of this code or City ordinance providing for a civil penalty, this chapter shall control.~~

~~170.42~~ Failure To Satisfy Penalty

~~A person who willfully fails to pay a monetary penalty as required by provisions of this chapter may be found in civil contempt of court after notice and hearing.~~

170.4525 Variance, Permit, Decision or Discretionary Approval – General

The City shall enforce the provisions, including any conditions or restrictions, of a variance, permit, decision, or discretionary approval issued under this code as if those provisions are part of this code.

170.5030 Variance, Permit, Decision, or Discretionary Approval – Voiding

1. General – Under the provisions of this section, the City may void any variance, permit, decision or discretionary approval granted or issued under this code.
2. Review Process – The City, as the applicant, shall use the same process to determine if a variance, permit, decision, or discretionary approval should be voided as it used to grant the variance, permit, decision, or discretionary approval.
3. Decisional Criteria – The City may void a variance, permit, decision, or discretionary approval only if it finds that:

- a. There have been repeated violations of any aspect, including conditions or restrictions, of the variance, permit, decision, or discretionary approval; and
 - b. The detriment caused by the violations clearly outweighs any public benefit of the variance, permit, decision, or discretionary approval.
4. Effect – If the City voids a variance, permit, decision, or discretionary approval, the City will apply and enforce the provisions of this code on the subject property, as if the variance, permit, decision, or discretionary approval had never been granted.

170.5535 No Personal Liability for Acts or Omissions

Each person responsible for the enforcement or administration of this code and each member of a Committee, Board, Commission or Council responsible for making any decision or recommendation under this code is relieved from any personal liability whatsoever from any injury to persons 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.

170.6040 Interpretations of This Code – General

1. Criteria – The Planning Director may, acting on his/her own initiative or in response to an inquiry, issue interpretations of any of the provisions of this code. The Director shall base his/her interpretations on:
 - a. The defined or common meaning of the words of the provision; and
 - b. The general purpose of the provision as expressed in the provision; and
 - c. The logical or likely meaning of the provision viewed in relation to the Comprehensive Plan.
2. Effect – An interpretation of this code will be enforced as if it is part of this code.
3. Availability – All interpretations of this code, filed sequentially, are available for public inspection and copying in the Planning Department

during regular business hours. The Planning Official shall also make appropriate references in this code to these interpretations.

170.6545 Interpretations of This Code – Appeal

1. **Who Can Appeal** – Any person who is aggrieved by an interpretation issued by the Planning Director may appeal that interpretation at any time.
2. **How To Appeal** – The applicant must file a letter of appeal indicating how the interpretation affects his/her property and presenting any relevant arguments or information on the correctness of the interpretation. The applicant shall include the appeals fee as established by ordinance.
3. **Applicable Procedures** – All appeals of interpretations of this code will be reviewed and decided upon using the appeal provisions of Process I, described in Chapter 145 KZC.
4. **Effect** – If the interpretation of the Planning Director is modified, the Planning Official shall:
 - a. Place the modifying decision in the Interpretation File; and
 - b. Change or remove, as appropriate, the interpretation that was modified; and
 - c. Change the reference in this code to reflect the modification.

170.7050 Conflict of Provisions

The standards, procedures, and requirements of the code are the minimum necessary to promote the health, safety, and welfare of the residents of Kirkland. The City is free to adopt more rigorous or different standards, procedures, and requirements whenever this becomes necessary. If the provisions of this code conflict one with another, or if a provision of this code conflicts with the provision of another ordinance of the City, the most restrictive provision or the provision imposing the highest standard prevails.

170.7555 Easement Agreements Approved by the City Attorney

In each case where the City requires an applicant to provide a public walkway, public use area, or other area, facility or structure that is open to the public, the applicant shall execute and record with the King County Bureau of Elections and Records an easement or similar document approved by the City Attorney.

PUBLICATION SUMMARY
OF ORDINANCE NO. 4281

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING, AND LAND USE AND AMENDING PORTIONS OF THE FOLLOWING CHAPTERS OF ORDINANCE 3719 AS AMENDED, THE KIRKLAND ZONING ORDINANCE: CHAPTER 1—USERS GUIDE, CHAPTER 5—DEFINITIONS, CHAPTER 95—TREE MANAGEMENT AND REQUIRED LANDSCAPING, CHAPTER 115—MISCELLANEOUS USE DEVELOPMENT AND PERFORMANCE STANDARDS, CHAPTER 117--PERSONAL WIRELESS FACILITIES, CHAPTER 141--SHORELINE ADMINISTRATION, CHAPTER 162—NONCONFORMANCE, CHAPTER 170 CODE ENFORCEMENT.

SECTION 1. Amends various sections of the Kirkland Zoning Code relating to code enforcement, as set forth in more detail in the title of the Ordinance.

SECTION 2. Provides a severability clause for the Ordinance.

SECTION 3. Provides that, to the extent the Ordinance is subject to the disapproval jurisdiction of the Houghton Community Council, it will become effective in the Houghton Community Municipal Corporation upon approval of the Houghton Community Council, or the failure of said Community Council to disapprove the Ordinance within 60 days of the passage of 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 April 1, 2011.

SECTION 5. Provides that a certified copy of this Ordinance will be provided to the King County Department of Assessments.

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 4th day of January, 2011.

I certify that the foregoing is a summary of Ordinance 4281 approved by the Kirkland City Council for summary publication.



City Clerk