

CITY OF KENMORE  
WASHINGTON  
ORDINANCE NO. 09-0299

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**AN ORDINANCE OF THE CITY OF KENMORE,  
WASHINGTON, AMENDING CHAPTER 13.45 OF THE  
KENMORE MUNICIPAL CODE RELATING TO ILLICIT  
DISCHARGE DETECTION AND ELIMINATION;  
ADOPTING A STORMWATER POLLUTION  
PREVENTION MANUAL; AND PROVIDING AN  
EFFECTIVE DATE.**

WHEREAS, in 1998 the City Council adopted King County's Illicit Discharge Detection and Elimination code (Chapter 9.12 of the King County Code, Water Quality), which is codified as Chapter 13.45 of the Kenmore Municipal Code (KMC); and

WHEREAS, an essential purpose underlying Chapter 13.45 KMC, is to protect the City's surface and ground water quality by providing requirements for reducing and controlling the discharge of contaminants; and

WHEREAS, King County has updated its Illicit Discharge Detection Elimination code to meet the Washington State Department of Ecology's National Pollutant Discharge Elimination System (NPDES) Phase I Permit requirements; and

WHEREAS, in order to meet the City's NPDES Phase II Permit requirements, which implement the mandates under the federal Clean Water Act, 33 U.S.C. 1251 et seq., the City's Illicit Discharge Detection and Elimination code must also be updated (Chapter 13.45 KMC); and

WHEREAS, the City Council desires to amend Chapter 13.45 KMC, and adopt an updated Stormwater Pollution Prevention Manual;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amendment. Section 13.45.010 of the Kenmore Municipal Code is amended to read as follows:

**13.45.010 Purpose.**

A. The purpose of this chapter is to protect the city's surface and ground water quality by providing minimum requirements for reducing and controlling the discharge of contaminants. The city council recognizes that water quality degradation can result either directly from one discharge or through the collective impact of many small discharges. Therefore, this chapter prohibits the discharge of contaminants into surface and stormwater and groundwater, and outlines preventive measures to restrict contaminants from entering such waters. These

measures include the implementation of best management practices (BMPs) by the residents of the city of Kenmore.

B. The city council finds this chapter is necessary to protect the health, safety and welfare of the residents of the city of Kenmore and the integrity of the city's resources for the benefit of all by: minimizing or eliminating water quality degradation; preserving and enhancing the suitability of waters for recreation, fishing, and other beneficial uses; and preserving and enhancing the aesthetic quality and biotic integrity of the water. The city council recognizes that implementation of this chapter is required under the federal Clean Water Act, 33 U.S.C. 1251 et seq. In meeting the intent of the Clean Water Act the city council also recognizes the importance of maintaining economic viability while providing necessary environmental protection and believes this chapter helps achieve both goals.

Section 2. Amendment. Section 13.45.020 of the Kenmore Municipal Code is amended to read as follows:

**13.45.020 Definitions.**

The following definitions shall apply in the interpretation and enforcement of this chapter:

A. "AKART" means an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." "AKART" represents the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. "AKART" applies to both point and nonpoint sources of pollution.

B. "Best management practices" or "BMPs" mean the best available and reasonable physical, structural, managerial, or behavioral activities, that, when used singly or in combination, eliminate or reduce the contamination of both surface and ground waters.

C. "Chapter" means this chapter and any administrative rules and regulations adopted to implement this chapter.

D. "City manager" means the Kenmore city manager or his or her designee, other department directors specified in enforcement procedures established pursuant to this chapter, or any duly authorized representatives of such directors.

E. "Clean Water Act" means 33 U.S.C. 1251 et. seq., as amended.

F. "County" means the municipality of King County.

G. "Discharge" means throw, drain, release, dump, spill, empty, emit, or pour forth any matter or to cause or allow matter to flow, run, or seep from land or be thrown, drained, released, dumped, spilled, emptied, emitted or poured into water.

H. "Drainage facility" means the system that collects, conveys, and stores surface and stormwater runoff. Drainage facilities shall include but not be limited to all surface and stormwater conveyance and containment facilities including streams, pipelines, channels, ditches, swamps, lakes, wetlands, closed depressions, infiltration facilities, retention/detention facilities, erosion/sedimentation control facilities and other drainage structures and appurtenances, both natural and artificial.

- I. “Farm management plan” means a comprehensive site-specific plan developed by the farm owner in cooperation with the city of Kenmore taking into consideration the landowner’s objectives while protecting water quality and related natural resources.
- J. “Forest practices” means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, as defined in Chapter 222-16 WAC.
- K. “Ground water” means all waters that exist beneath the land surface or beneath the bed of any stream, lake, or reservoir, or other body of surface water, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves.
- L. “National Pollutant Discharge Elimination System” or “NPDES” means the national program for controlling pollutants from point source discharges directly into waters of the United States under the Clean Water Act.
- M. “National Pollutant Discharge Elimination System permit” means an authorization, license, or equivalent control document issued by the Environmental Protection Agency or the Washington State Department of Ecology to implement the requirements of the NPDES program.
- N. “Person” means an individual, and his or her agent or assign, municipality, political subdivision, government agency, partnership, corporation, business, or any other entity.
- O. “Source control BMP” means a BMP intended to prevent contaminants from entering surface and stormwater and/or ground water including the modification of processes to eliminate the production or use of contaminants. “Source control BMPs” can be either structural or nonstructural. Structural source control BMPs involve the construction of a physical structure onsite, or other type of physical modification to a site. An example of a structural source control BMP is building a covered storage area. A nonstructural source control BMP involves the modification or addition of managerial or behavioral practices. An example of a nonstructural source control BMP is using less toxic alternatives to current products or sweeping parking lots.
- P. “State waste discharge permit” means an authorization, license, or equivalent control document issued by the Washington State Department of Ecology in accordance with Chapter 173-216 WAC.
- Q. “Stormwater Pollution Prevention Manual” means the manual (and supporting documentation referenced or incorporated in the manual) describing best management practices and procedures for existing facilities and existing and new activities not covered by the Surface Water Design Manual.
- R. “Surface and stormwater” means water originating from rainfall and other precipitation that is found on ground surfaces and in drainage facilities, rivers, streams, springs, seeps, ponds, lakes and wetlands as well as shallow groundwater.
- S. “Treatment BMP” means a BMP intended to remove contaminants once they are already contained in stormwater. Examples of treatment BMPs include: oil/water separators, biofiltration swales, and wet ponds.

Section 3. Amendment. Section 13.45.030 of the Kenmore Municipal Code is amended to read as follows:

**13.45.030 Discharges into city waters.**

**A. Prohibited Discharges.**

1. It is unlawful for any person to discharge any contaminants into surface and stormwater, ground water, or Puget Sound. Contaminants include, but are not limited to, the following:
  - a. Trash or debris;
  - b. Construction materials;
  - c. Petroleum products including but not limited to oil, gasoline, grease, fuel oil, heating oil;
  - d. Antifreeze and other automotive products;
  - e. Metals in either particulate or dissolved form;
  - f. Flammable or explosive materials;
  - g. Radioactive material;
  - h. Batteries;
  - i. Acids, alkalis, or bases;
  - j. Paints, stains, resins, lacquers, or varnishes;
  - k. Degreasers and solvents;
  - l. Drain cleaners;
  - m. Pesticides, herbicides, or fertilizers;
  - n. Steam cleaning wastes;
  - o. Soaps, detergents, or ammonia;
  - p. Swimming pool backwash;
  - q. Chlorine, bromine, and other disinfectants;
  - r. Heated water;
  - s. Domestic animal wastes;
  - t. Sewage;
  - u. Recreational vehicle waste;
  - v. Animal carcasses;
  - w. Food wastes;
  - x. Bark and other fibrous materials;
  - y. Collected lawn clippings, leaves, or branches;
  - z. Silt, sediment, or gravel;
  - aa. Dyes (except as stated in subsection (D)(1) of this section);
  - bb. Chemicals, not normally found in uncontaminated water;
  - cc. Any hazardous material or waste, not listed above.
2. Illicit Connections. Any connection, identified by the city manager, that could convey anything not composed entirely of surface and stormwater directly to surface and stormwater or ground water is considered an illicit connection and is prohibited with the following exceptions:

- a. connections conveying allowable discharges;
- b. connections conveying discharges pursuant to an NPDES permit (other than an NPDES stormwater permit) or a state waste discharge permit; and
- c. connections conveying effluent from onsite sewage disposal systems to subsurface soils.

B. Allowable Discharges with the Application of BMPs. This section applies to certain business and residential activities that have the potential to contribute pollutants to stormwater runoff or directly to receiving waters. To prevent a prohibited discharge, BMPs from the Stormwater Pollution Prevention Manual, or supplemental BMPs as determined necessary by the city manager, shall be applied to the activities identified in the Stormwater Pollution Prevention Manual. Examples of common activities identified in the Stormwater Pollution Prevention Manual that might result in prohibited discharges include, but are not limited, to the following:

- 1. Potable water line flushing;
- 2. Dust Control with water;
- 3. Automobile and boat washing;
- 4. Pavement and building washing;
- 5. Swimming pool and hot tub maintenance;
- 6. Vehicle and equipment repair and maintenance;
- 7. Building repair and maintenance;
- 8. Landscaping activities and vegetation management;
- 9. Hazardous waste handling;
- 10. Solid and food waste handling; and
- 11. Application of pesticides or other chemicals (other than landscaping maintenance).

C. The following types of discharges shall not be considered prohibited discharges for the purpose of this chapter unless the city manager determines that the type of discharge, whether singly or in combination with other discharges, is causing significant contamination of surface and stormwater or ground water:

- 1. Spring water;
- 2. Diverted stream flows;
- 3. Uncontaminated water from crawl space pumps, foundation drains, or footing drains;
- 4. Pumped ground water flows that are uncontaminated;
- 5. Materials placed as part of an approved habitat restoration or bank stabilization project;
- 6. Natural uncontaminated surface water or ground water;
- 7. Flows from riparian habitats and wetlands;
- 8. Collected rainwater that is uncontaminated;
- 9. Uncontaminated ground water that seeps into or otherwise enters stormwater conveyance systems;
- 10. Air conditioning condensation;

11. Irrigation water from agricultural sources that is commingled with stormwater runoff; and
  12. Other types of discharges as determined by the city manager.
- D. Exceptions.
1. Dye testing is allowable but requires verbal notification to the city manager at least one day prior to the date of test. The city of Kenmore health department is exempt from this requirement.
  2. A person does not violate subsection A of this section if:
    - a. That person has properly designed, constructed, implemented and is properly maintaining BMPs, and is carrying out AKART as required by this chapter, but contaminants continue to enter surface and stormwater or groundwater; or
    - b. That person can demonstrate that there are no additional contaminants being discharged from the site above the background conditions of the water entering the site.
  3. A person who, under subsection D.2. of this section is not in violation of subsection (A) "Prohibited Discharges" of this section, is still liable for any prohibited discharges through illicit connections, dumping, spills, or other discharges not addressed by BMPs satisfying subsection D.2. of this section that allow contaminants to enter surface and stormwater or ground water.
  4. Emergency response activities or other actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter in order to avoid an imminent threat to public health or safety, shall be exempt from this section. The city manager may specify actions that qualify for this exception in city procedures. A person undertaking emergency response activities shall 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.

Section 4. Adoption and amendment. The City Council adopts the Kenmore Stormwater Pollution Prevention Manual attached as Attachment 1, and incorporated by reference; and amends Section 13.45.040 of the Kenmore Municipal Code to read as follows:

**13.45.040 Stormwater Pollution Prevention Manual.**

A. Adoption. The Kenmore Stormwater Pollution Prevention Manual is adopted for use in the City of Kenmore. Future versions of said Manual shall be

adopted only if approved by the Kenmore city council. The Manual is available in electronic form from the city of Kenmore.

B. Compliance with this chapter shall be achieved through the use of best management practices described in the Kenmore Stormwater Pollution Prevention Manual. In applying the Stormwater Pollution Prevention Manual, the city manager shall first require the implementation of source control BMPs. If these are not sufficient to prevent contaminants from entering surface and stormwater or ground water, the city manager may require implementation of treatment BMPs, as set forth in AKART. The city manager will provide, upon reasonable request, available technical assistance materials and information, and information on outside financial assistance options to persons required to comply with this chapter.

C. In applying the Stormwater Pollution Prevention Manual to prohibited discharges from normal single family residential activities, the city manager shall use public education and warnings as the primary method of gaining compliance with this chapter and shall not use citations, notice and orders, assessment of civil penalties and fines, or other compliance actions as authorized in KMC 1.20 unless the city manager determines:

1. The discharge from a normal single family residential activity, whether singly or in combination with other discharges, is causing a significant contribution of contaminants to surface and stormwater or ground water; or
2. The discharge from a normal single family residential activity poses a hazard to the public health, safety or welfare, endangers any property or adversely affects the safety and operation of city right-of-way, utilities or other city-owned or maintained property.

D. Persons implementing BMPs through another federal, state, or local program will not be required to implement the BMPs prescribed in the Stormwater Pollution Prevention Manual, unless the city manager determines the alternative BMPs are ineffective at reducing the discharge of contaminants. If the other program requires the development of a stormwater pollution prevention plan or other best management practices plan, the person shall make their plan available to the city of Kenmore upon request. Persons who qualify for exemptions include, but are not limited to, persons:

1. Required to obtain a general or individual NPDES permit from the Washington State Department of Ecology;
2. Implementing and maintaining, as scheduled, a city-approved farm management plan;
3. Implementing BMPs in compliance with Chapter 18.70 KMC;
4. Implementing BMPs in compliance with the management program of the city's municipal NPDES permit;
5. Engaged in forest practices, with the exception of forest practices occurring on lands platted after January 1, 1960, or on lands being converted to another use, or when

- regulatory authority is otherwise provided to local government by RCW 76.09.240; or
6. Identified by the city manager as being exempt from this section.

Section 5. Amendment. Section 13.45.050 of the Kenmore Municipal Code is amended to read as follows:

**13.45.050 Administration.**

The city manager is authorized to implement the provisions of this chapter. The city manager is authorized to promulgate and adopt administrative rules and regulations for the purpose of implementing and enforcing the provisions of this chapter. The city manager will coordinate the implementation and enforcement of this chapter with other departments of city of Kenmore government.

Section 6. Amendment. Section 13.45.060 of the Kenmore Municipal Code is amended to read as follows:

**13.45.060 Enforcement.**

A. The city manager is authorized to carry out enforcement actions pursuant to the enforcement and penalty provisions of this chapter, and Chapters 1.15 and 1.20 KMC and other enforcement provisions adopted by rule.

B. The City Manager shall use public education, warnings, technical assistance and the implementation of BMPs, and when necessary, AKART, as the primary methods of gaining compliance with this chapter; unless the city manager determines a violation is a result of a flagrant act that should be addressed through immediate penalties or poses a hazard as defined in the KMC 13.45.070 Hazards.

C. The city manager, in consultation with other departments of the city of Kenmore government, shall develop and implement additional enforcement procedures. These procedures shall indicate how the city will investigate and respond to reports or instances of noncompliance with this chapter and shall identify by title the official(s) responsible for implementing the enforcement procedures.

D. The city manager is authorized to make such inspections and take such actions as may be required to enforce the provisions of this chapter.

1. The city manager may observe BMPs or examine or sample surface and stormwater or ground water as often as may be necessary to determine compliance with this chapter. Whenever an inspection of a property is made, the findings shall be recorded and a copy of the inspection findings shall be furnished to the owner or the person in charge of the property after the conclusion of the investigation and completion of the inspection findings. The person in violation of this chapter shall be responsible for all costs and expenses related to the City's sampling, examination,

analysis, application of BMPs authorized herein and/or abatement of the violation.

2. When the city manager has made a determination under subsection (D)(1) of this section that any person is violating this chapter, the city manager may require the violator to sample and analyze any discharge, surface and stormwater, ground water, and/or sediment, in accordance with sampling and analytical procedures or requirements determined by the city manager. If the violator is required to complete this sampling and analysis, a copy of the analysis shall be provided to the city manager. The person in violation of this chapter shall be responsible for all costs and expenses related to the sampling, examination, analysis, application of BMPs required by the city manager and/or abatement of the violation.

E. In addition to any other penalty or method of enforcement, the city may bring actions for injunctive or other relief to enforce this chapter.

Section 7. Amendment. Section 13.45.070 of the Kenmore Municipal Code is amended to read as follows:

**13.45.070 Hazards.**

A. Whenever the city manager determines that any violation of this chapter poses a hazard to public health, safety, or welfare, endangers any property, or adversely affects the safety and operation of city right-of-way, utilities, and/or other property owned or maintained by the city, the person holding title to the subject property, and/or other person or agent in control of said property, upon receipt of notice in writing from the city manager, shall within the period specified therein address the cause of the hazardous situation in conformance with the requirements of this chapter.

B. Notwithstanding any other provisions of this chapter, whenever it appears to the city manager that conditions covered by this chapter exist requiring immediate action to protect the public health and/or safety, the city manager is authorized to enter at all times in or upon any such property, public or private, for the purpose of inspecting and investigating such emergency conditions. The city manager, without prior notice, may order the immediate discontinuance of any activity leading to the emergency condition. Failure to comply with such order shall constitute a misdemeanor.

Section 8. Amendment. Section 13.45.090 of the Kenmore Municipal Code is amended to read as follows:

**13.45.090 Civil penalties for water quality.**

The enforcement provisions for water quality are intended to encourage compliance with this chapter. To achieve this, violators will be required to take corrective action and comply with the requirements of this chapter, and may be

required to pay a civil penalty for the redress of ecological, recreational, and economic values lost or damaged due to their unlawful action.

A. The provisions in this section are in addition to and not in lieu of any other penalty, sanction or right of action provided by law.

B. Any person in violation of this chapter may be subject to civil penalties assessed as follows:

1. An amount reasonably determined by the city manager to be equivalent to the economic benefit the violator derives from the violation as measured by the greater of the resulting increase in market value of the property or business value received by the violator, or savings of construction or retrofitting costs realized by the violator performing any act in violation of this chapter; and
2. An amount, not to exceed \$25,000, that is reasonably based upon the nature and gravity of the violation and the cost to the city of enforcing this chapter against the violator.

C. Any person who, through an act of commission or omission, aids or abets in a violation shall be considered to have committed the violation for the purposes of the civil penalty.

D. Each violator is jointly and severally liable for a violation of this chapter. The city manager may take enforcement action, in whole or in part, against any violator. The decisions whether to take enforcement action, what type of action to take, and which person to take action against, are all entirely within the city manager's discretion. Factors to be used in taking such enforcement actions shall be:

1. Awareness of the violation;
2. Ability to correct the violation;
3. Cooperation with government agencies;
4. Degree of impact or potential threat to water or sediment quality, human health, or the environment.

E. In the event more than one person is determined to have violated the provisions of this chapter, all applicable civil penalties may be imposed against each person, and recoverable damages, costs, and expenses may be allocated among the persons on any equitable basis. Factors that may be considered in determining an equitable allocation include:

1. Awareness of the violation;
2. Ability to correct the violation;
3. Ability to pay damages, costs, and expenses;
4. Cooperation with government agencies;
5. Degree of impact or potential threat to water or sediment quality, human health, or the environment.

F. The city manager may engage in mitigation discussions with the violator. The city manager may reduce the penalties based upon one or more of the following mitigating factors:

1. The person responded to city attempts to contact the person and cooperated with efforts to correct the violation;

2. The person showed due diligence and/or substantial progress in correcting the violation; or
3. An unknown person was the primary cause of the violation. Payment of a monetary penalty pursuant to this chapter does not relieve the person of the duty to correct the violation.

G. All civil penalties recovered during the enforcement of this chapter under Chapter 1.20 KMC shall be deposited into a fund of the city and shall be used for the protection of surface and stormwater or ground water as set forth in this chapter, through education or enhanced implementation.

Section 9. Amendment. Section 13.45.120 of the Kenmore Municipal Code is amended to read as follows:

**13.45.120 Penalty.**

Except as provided in KMC 13.45.090.B(1) and (2) for civil penalties, any person violating any of the provisions of this chapter may be subject to the general penalty and enforcement provisions in this chapter and Chapters 1.15 and 1.20 KMC.

Section 10. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 2nd DAY OF NOVEMBER, 2009.

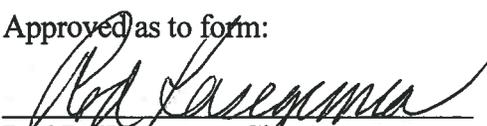
CITY OF KENMORE

  
\_\_\_\_\_  
David Baker, Mayor

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Lynn Batchelor, City Clerk

Approved as to form:

  
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Rod P. Kaseguma, City Attorney

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