

**CITY OF MERCER ISLAND  
ORDINANCE NO. 15C-09**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND AMENDING  
CHAPTER 15.14 OF THE MERCER ISLAND CITY CODE REGARDING  
UNLAWFUL CROSS-CONNECTIONS**

WHEREAS, the City of Mercer Island Municipal Code (MICC) contains Title 15, Water, Sewers and Public Utilities and Chapter 15.14 Unlawful Cross-Connections, adopted as Ordinance A-38; and

WHEREAS, the Washington Administrative Code requires the City to develop and implement a cross-connection control program that meets the requirements of WAC 246-290-490 and the City may establish a more stringent program to protect the City's public water system; and

WHEREAS, the City Council of the City of Mercer Island, as required by Washington Administrative Code 246-290-490, shall ensure the elimination or control of all cross-connections between a water consumer's system and the City's public water system; and

WHEREAS, the Washington State Department of Health recommended the City update its cross-connection control program to better protect the City's public water system; and

WHEREAS, the City as the purveyor is required to adopt a local ordinance that establishes its legal authority to implement a cross-connection control program; describes the operating policies and technical provisions of the cross-connection control program; and describes the corrective actions used to ensure that consumers comply with the purveyor's cross-connection control requirements; and

WHEREAS, the installation or maintenance of an unprotected cross-connection may endanger the water quality of the City's public water system and pose a public health hazard; and

WHEREAS, the City as the Purveyor is developing and implementing procedures to ensure cross-connections are eliminated whenever possible and when cross-connections cannot be eliminated, they are controlled by installation of approved backflow preventers commensurate with the degree of hazard; and

WHEREAS, the installation of approved backflow preventers to counteract backpressure or prevent backsiphonage to the City's public water system are necessary for the public health, welfare and safety of the citizens of the City; and

WHEREAS, the City shall develop and implement procedures to ensure approved backflow preventers relied upon to protect the City's public water system are inspected and/or tested on an annual basis; and

WHEREAS, proposed Ordinance No. 15C-09 updates and amends the definition section to use the definitions of the Washington Administrative Code; and

WHEREAS, proposed Ordinance No. 15C-09 specifies under what circumstances premises isolation is required; and

WHEREAS, proposed Ordinance No. 15C-09 updates and amends the enforcement section to establish a new monetary penalty schedule and penalties for non-compliance and establishes a new appeal process.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON DO HEREBY ORDAIN AS FOLLOWS:

**Section 1.** **Amend MICC Chapter 15.14, Unlawful Cross-Connections.** MICC Chapter 15.14, Unlawful Cross-Connections is hereby amended as follows:

**Chapter 15.14**  
**UNLAWFUL CROSS-CONNECTIONS**

**Sections:**

15.14.010 Purpose

~~15.14.010~~020 Definitions

~~15.14.050~~030 Adoption of State Regulations

~~15.14.020~~040 Cross-Connection Declared Unlawful

~~15.14.030~~050 Approved Backflow Preventers~~Prevention Devices~~ Required

15.14.060 Certification Response and Enforcement

15.14.070 Inspections and Testing Procedures of Approved Backflow Preventers

~~15.14.080 Enforcement~~Violation—Penalty

~~15.14.060~~090 Abatement of Unlawful Cross-Connection and Installation of Approved Backflow Preventers~~Devices—Procedures~~

15.14.100 Appeal Procedure

**15.14.010 Purpose.**

The purpose of this chapter is to protect the public drinking water system from the risk of contamination due to backflow through cross connections and to eliminate or control cross-connections between the city’s public water system and the consumer’s water system.

**15.14.010**~~020~~ **Definitions.**

~~For the purposes of this chapter, the following words or phrases shall have the meanings as hereinafter set forth:~~

A. Definitions in the Washington Administrative Code 246-290-010, as they presently exist and as they may, from time to time, be amended, are hereby adopted and incorporated herein by this reference as if set forth in full. In addition to the definitions adopted by reference, the following words shall have the indicated meanings.

B. “Water Purveyor” means a person designated by the City Manager to be the authorized agent of the city with authority over the city’s public water system.

C. “Substantial alteration” means an alteration that costs 50 percent or more of the current assessed value of the structure.

A. ~~“Backflow” means a flow other than in the intended direction of flow, of any foreign liquids, gases or substances into the distribution system of a public water supply.~~

B. ~~“Backflow prevention device” means a device approved by the state of Washington, Department of Social and Health Services or such other state department that shall have jurisdiction over the subject matter of backflow prevention devices and by the American Waterworks Association used to counteract back pressure or prevent siphonage into the distribution system of a public water supply.~~

C. ~~“Cross connection” means any physical arrangement whereby a public water system is connected, directly or indirectly, with any other water supply system, sewer, drain, conduit, pool, storage reservoir, plumbing fixture, or any other source of wastes or liquids of any unknown or unsafe quality which are capable of imparting contamination to a public water supply.~~

#### **15.14.050030 Adoption of State Regulations.**

Rules and regulations of the ~~Washington State Board~~ Department of Health regarding public water supply systems, entitled "Cross-Connection Control" ~~Washington Administrative Code 246-290-490 as set forth in WAC 248-54-285, as they presently exist set forth therein or as such rules and regulations and as they may be amended from time to time in the future, are hereby adopted and incorporated herein by this reference and incorporated herein as if set forth herein in full.~~

#### **15.14.020040 Cross-Connection Declared Unlawful.**

The installation or maintenance of an unprotected a cross-connection is hereby declared to be unlawful. The control and elimination of cross-connections shall be in accordance with the applicable sections of the Washington Administrative Code, the Mercer Island City Code and the policies and procedures of the city’s cross-connection control program, ~~in the opinion of the city manager or his designee, will endanger the water quality of any portion of the potable water supply system of the city is declared to be unlawful.~~

#### **15.14.030050 Approved Backflow Preventers ~~Prevention Devices~~ Required.**

~~Backflow prevention devices shall be installed and maintained by any service customer on any service connection to the city’s water supply system where the backflow prevention device is deemed to be necessary for the protection of the city’s water supply.~~

A. Approved backflow preventers shall be installed at the city’s water service connection commensurate with the assessed degree of hazard. The consumer shall install and maintain all approved backflow preventers deemed necessary by the standards established by the city. The approved backflow preventers shall be installed in accordance with these standards. The consumer, at the consumer’s expense, shall have all approved backflow preventers installed, inspected and tested in accordance with this chapter.

B. Premises isolation is required for the following:

1. Severe and High Health Cross-Connection Hazard Premises listed in Washington Administrative Code 246-290-490(4)(b), Table 9; and

2. New non-residential buildings or substantial alteration of non-residential buildings; and
3. New single-family dwellings or substantial alteration of a single-family dwelling with access to an unapproved auxiliary water supply.

**15.14.060 Certification Response and Enforcement.**

A. Certification Response Required. The city will periodically send a certification to identify consumers with property features which may require approved backflow preventers. Consumers shall return the certification within thirty (30) days.

B. Enforcement. In the event the consumer has failed to respond to the certification within the specified time period, the consumer shall be subject to the following penalties:

1. Warning: Written notice shall be sent to the consumer or alternatively, a copy of such written notice shall be posted on the premises involved. The notice shall provide that the certification shall be returned within thirty (30) days of the date the notice is mailed or posted on the premises.
2. First violation: If the consumer does not correct the violation by returning the certification within thirty (30) days of the first written notice, the consumer shall receive a \$50.00 penalty.
3. Second and subsequent violations: If the consumer does not correct the violation by returning the certification within thirty (30) days of the issuance of the first or subsequent penalty, the consumer shall receive an additional \$50.00 penalty.

**15.14.070 Inspections and Testing Procedures of Approved Backflow Preventers**

A. Approved backflow preventers shall be inspected and tested within thirty (30) days:

1. Of the time of initial installation;
2. After the approved backflow preventer is repaired;
3. After the approved backflow preventer is moved, relocated, or reinstated; and
4. After the approved backflow preventer fails testing or inspection.

B. Approved backflow preventers shall also be inspected and tested:

1. Annually after initial installation; and
2. More often if tests indicate repeated failures.

C. Approved backflow preventers must successfully pass the annual test and others set forth in Sections A and B. Approved backflow preventers failing any test shall be repaired and retested.

D. The city will send a courtesy reminder letter to the consumer regarding the required annual inspection and test of the approved backflow preventers. Failure of the city to provide the reminder shall not affect the consumer's duty to conduct such an inspection and to obtain testing under this section. The consumer shall have all required inspections and tests performed by any

person certified as a BAT (backflow assembly tester) by the Washington State Department of Health, and the results shall be delivered to the city on a form acceptable to the city.

E. If any inspection and/or test is not performed within the time required in section A or B, or if the approved backflow preventer does not successfully pass the required tests, the city may initiate enforcement proceedings as set forth in 15.14.080(B), abatement procedures as set forth in 15.14.090, or both.

A. The city manager, or his designee, upon presenting identification, shall be allowed access to all portions of the premises, including buildings and structures, to which water is supplied, at reasonable hours of the day and for the sole purpose of inspecting and determining whether or not there has been compliance with the provisions of this chapter.

B. Water service may be refused or discontinued to any premises for failure to allow necessary access and inspections.

#### **15.14.080 Enforcement Violation—Penalty**

A. The city shall have the authority to terminate water service, take abatement action as set forth in 15.14.090 and impose monetary penalties for violations of the inspection, testing and installation requirements in this chapter.

B. Water Service Termination and Monetary Penalties. In the event that the Water Purveyor or his/her designee, determines that an unlawful cross-connection exists and/or that the consumer has failed to meet the inspection and testing requirements for backflow preventers, the consumer shall be subject to the following penalties:

1. Warning: Written notice shall be sent to the consumer or alternatively, a copy of such written notice shall be posted on the premises involved. The notice shall provide that the unlawful cross-connection shall be corrected by testing or installation within thirty (30) days of the date the notice is mailed or posted on the premises.

2. First violation: If the consumer does not correct the violation by testing or installation within thirty (30) days of the first written notice, the consumer shall receive a \$100.00 penalty and notice that water service to the premises may be terminated after 30 days.

3. Second violation: If the consumer does not correct the violation by testing or installation within thirty (30) days of the issuance of the first penalty, the consumer shall receive an additional \$150.00 penalty and water service to the premises may be shut off immediately.

4. If the Water Purveyor determines that service should not be interrupted, the city may hire a contractor to abate the unlawful cross-connection as set forth in 15.14.090.

~~Violation of, or failure to comply with any of the provisions of this chapter shall be a gross misdemeanor, and any person found guilty thereof shall be punished by a fine not exceeding \$500, or imprisonment not exceeding six months, or both such fine and imprisonment. It shall be a separate offense for each and every day, or portion thereof, during which any violation of the provisions of this chapter is committed, continued or permitted.~~

**15.14.06090 Abatement of Unlawful Cross-Connection and Installation of Approved Backflow Preventers—Procedures**

Unprotected cross connections which are declared by this chapter to be unlawful, whether presently existing or hereinafter installed, and/or services requiring approved backflow preventers prevention devices, and/or unlawful use of a private water supply system, are hereby declared to be public nuisances. In addition to any other provisions of the municipal code or ordinances of the city pertaining to abatement of public nuisances, these nuisances shall be subject to abatement in accordance with the following procedures:

A. In the event that the ~~Water Purveyor~~ city manager or his/her designee, determines an unlawful cross-connection that a nuisance as hereinafter provided exists, written notice shall be sent to the consumer as set forth in 15.14.080(B). ~~in whose name the water service is established under the records of the city's public services department or alternatively, a copy of such written notice shall be posted on the premises involved.~~ The notice shall provide that the unlawful cross-connection nuisance described therein shall be corrected within thirty (30) days of the date the notice is mailed or posted on the premises.

B. In the event such unlawful cross-connection the nuisance is not abated within the prescribed period of time as set forth in 15.14.080(B), water service to the premises may be shut off immediately or, if the Water Purveyor determines that service should not be interrupted, the city may hire a contractor to abate the unlawful cross-connection as required by the city, including the installation of approved backflow preventers discontinued. In such event, the city shall bill the consumer and/or property owner for all costs incurred (including its reasonable attorneys' fees). The city shall provide written notice to the consumer and/or property owner after 10 days in default; subsequent to the 10 days the city shall have the right to lien the real property. The City will follow all applicable state laws throughout the abatement process.

C. Any new service with unlawful cross-connections shall be refused water service by the City until such time as the prospective consumer has installed approved backflow preventers as required by the city. In the event that the nuisance, in the opinion of the city manager or his designee, presents an immediate danger of contamination to the public water supply service from the city water supply system to the premises may be terminated immediately without prior notice, provided notice will be posted on the premises in the manner heretofore provided at the time the service is terminated.

**15.14.100 Appeal procedure.**

A. A consumer may appeal the termination of water service and/or the assessment of a monetary penalty to the Water Purveyor by filing a written request for consideration within 10 days of receipt of notice of a monetary penalty or termination of water service.

B. The Water Purveyor shall consider the explanation provided by the consumer and shall make his/her decision on the basis of the explanation and steps taken to comply with installation of backflow preventers and/or to comply with the required inspection and testing of backflow preventers. The Water Purveyor shall affirm, reverse or modify the assessment of monetary penalty and shall affirm or reverse the termination of water service.

C. A consumer may appeal the Water Purveyor's decision by filing a written notice of appeal to the city clerk within 14 days of the Water Purveyor's decision. The city's hearing examiner shall hear the appeal. The decision of the hearing examiner is final as to administrative remedies with the city.

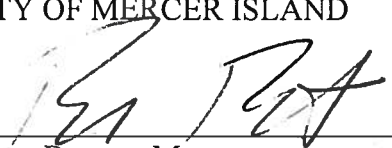
**Section 2.** **Severability.** If any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**Section 3.** **Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 4.** **Effective Date.** This Ordinance shall take effect and be in force within 30 days after passage and publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 15th day of June 2015 and signed in authentication of its passage.

CITY OF MERCER ISLAND

  
\_\_\_\_\_  
Bruce Bassett, Mayor

ATTEST:

  
\_\_\_\_\_  
Allison Spietz, City Clerk

Approved as to Form:

  
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Kari Sand, City Attorney

Date of Publication: 06/24/2015