



CITY OF KIRKLAND

123 Fifth Avenue, Kirkland, WA 98033 425.587.3000
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Jeremy McMahan, Planning Supervisor
Eric Shields, Planning Director

Date: September 6, 2006

Subject: Repeal of Ordinance No. 3950, amendment to the Kirkland Shoreline Master Program (File No. ZON04-00004)

Recommendation

Adopt an ordinance repealing Ordinance 3950.

Background

On July 6, 2004, the City Council adopted Ordinance 3950 amending the Kirkland Shoreline Master Program (SMP) (see Attachment 1). The amendments were to the Urban Mixed Use 1 shoreline environment (essentially the shoreline area of the Central Business District). The amendments were intended to bring the shoreline regulations into consistency with the Kirkland Zoning Code on the following points:

- Eliminate lot size/density restrictions (7,200 square feet with 1 unit/1,800 square feet per dwelling unit). There are no density restrictions in the CBD.
- Eliminate 30% view corridor requirements. Continuous retail frontage required in the CBD.
- Add Hotel as an allowed use. Hotel is an allowed use in the CBD.

The amendments were considered minor in nature and received no public comment through the hearing process. Pursuant to RCW 90.58.090, the amending ordinance and background materials were sent to the Washington State Department of Ecology for approval. After several conversations with the State, the Department of Ecology concluded that the amendments were considered “comprehensive” in nature and should be processed in conjunction with the City’s comprehensive update to the SMP that is currently underway (see Attachment 2).

Staff will take the proposed changes through the current amendment process, anticipated for completion in fall of 2007.

ORDINANCE NO. 3950

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PLANNING, LAND USE, AND SHORELINES, AMENDING PORTIONS OF THE FOLLOWING CHAPTERS OF TITLE 24 (ENVIRONMENTAL PROCEDURES) OF THE KIRKLAND MUNICIPAL CODE: CHAPTER 24.05 - SHORELINE MASTER PROGRAM (FILE NO. ZON04-00004) AND REPEALING ORDINANCE NO. 3945.

WHEREAS, the City Council has received from the Kirkland Planning Commission a recommendation to amend certain sections of the Kirkland Shoreline Master Program (Chapter 24.05 of Title 24 of the Kirkland Municipal Code), and bearing Kirkland Department of Planning and Community Development File No. ZON04-00004; and

WHEREAS, pursuant to the City of Kirkland's Concurrency Management System, KMC Title 25, this action is exempt from the concurrency management process; and

WHEREAS, prior to making the recommendation, the Planning Commission, following notice thereof as required by RCW 35A.63.070 and WAC 173-26-100, on March 25th, 2004, held a public hearing on the amendment proposals and considered the comments received at the hearing; and

WHEREAS, pursuant to the State Environmental Policy Act there has accompanied the legislative proposal and recommendation through the entire consideration process, a final determination of nonsignificance, including supporting environmental documents, issued by the responsible official pursuant to WAC 197-11-340 and WAC 197-11-390; 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. The following specified sections of the Kirkland Shoreline Master Program (Chapter 24.05 of Title 24 of the Kirkland Municipal Code) are amended to read as follows:

As set forth in Attachment A which by this reference is incorporated herein.

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.

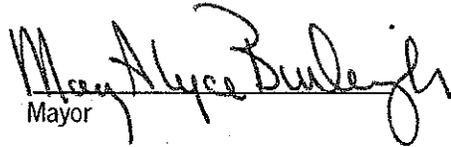
Section 3. Ordinance Number 3945 is hereby repealed.

Section 4. This ordinance shall be in full force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law, or upon the date of a letter to the City of Kirkland from the Washington State Department of Ecology, or of a rule of the Department, approving the Shoreline Master Program amendments adopted by this ordinance, whichever occurs last in time.

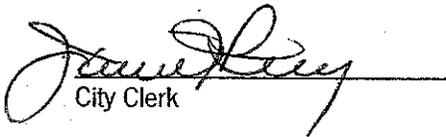
Section 5. A complete copy of this ordinance, including Findings, Conclusions, and Recommendations adopted by reference, shall be certified by the City Clerk, who shall then forward the certified copy to the King County Department of Assessments.

PASSED by majority vote of the Kirkland City Council in regular, open meeting this 6th day of July, 2004.

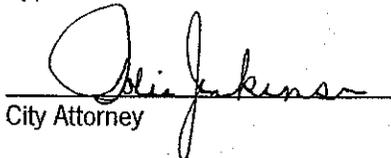
SIGNED IN AUTHENTICATION thereof this 6th day of July, 2004.


Mayor

Attest:


City Clerk

Approved as to Form:


City Attorney

ATTACHMENT A

Title 24 KMC – Environmental Procedures Amendments**Chapter 24.05 KMC - Shoreline Master Program**

24.05.110 See Attachment 1 - Adds a use listing of "Hotel" to the Urban Mixed Use 1 Shoreline Environment.

24.05.150 Use regulations—Attached and stacked dwelling units.

- (a) General (no change)
- (b) Permitted Use (no change)
- (c) Lot Size.
 - (1) (no change)
 - (2)(A) Minimum lot size for properties in the Urban Mixed Use 1 Shoreline Environment lying waterward of 98th Avenue NE or Juanita Drive is seven thousand two hundred square feet of lot area landward of the high waterline, with at least one thousand eight hundred square feet of lot area landward of the high waterline per dwelling unit.
 - (B) There is no minimum lot size or minimum lot area per dwelling unit for other properties in the Urban Mixed Use 1 Shoreline Environment.
 - (3) (no change)
 - (4) (no change)
 - (5) (no change)
- (d) Required Yards (no change)
- (e) Minimum View Corridor Required. For properties lying waterward of Lake Washington Boulevard, Lake Street South (except properties in the Urban Mixed Use 1 Shoreline Environment), 98th Avenue NE, or Juanita Drive, a minimum view corridor of thirty percent of the average parcel width must be maintained. The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from these rights-of-way to and beyond Lake Washington.
- (f) Height (no change)

24.05.155 Use regulations—Restaurants.

- (a) General (no change)
- (b) Permitted Use (no change)
- (c) Lot Size (no change)
- (d) Required Yards (no change)
- (e) Minimum View Corridor Required. For properties lying waterward of Lake Washington Boulevard, Lake Street South (except properties in the Urban Mixed Use 1 Shoreline Environment), 98th Avenue NE or Juanita Drive, a minimum view corridor of thirty percent of the average parcel width must be maintained.

The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from these rights-of-way to and beyond Lake Washington.

(f) Height (no change)

24.05.160 Use regulations—Retail and office use.

- (a) General (no change)
- (b) Permitted Use (no change)
- (c) Lot Size (no change)
- (d) Required Yards (no change)
- (e) Minimum View Corridor Required. For properties lying waterward of Lake Washington Boulevard, Lake Street South (except properties in the Urban Mixed Use 1 Shoreline Environment), 98th Avenue NE or Juanita Drive, a minimum view corridor of thirty percent of the average parcel width must be maintained. The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from these rights-of-way to and beyond Lake Washington.
- (f) Height (no change)

Attachments:

1. KMC 25.04.110: Adds "Hotel" use listing to Urban Mixed Use 1 Shoreline Environment

CHART 24.05.110

SHORELINE ENVIRONMENT USES	URBAN MIXED 1 SHORELINE ENVIRON.	URBAN MIXED 2 SHORELINE ENVIRON.	URBAN RESIDENTIAL 1 SHORELINE ENVIRON.	URBAN RESIDENTIAL 2 SHORELINE ENVIRON.	SUBURBAN RESIDENTIAL SHORELINE ENVIRON.	CONSERVANCY 1 SHORELINE ENVIRON.	CONSERVANCY 2 SHORELINE ENVIRON.
Detached Residential	SDP*	SDP*	SDP*	SDP*	SDP*	SCUP	SCUP
Attached or Stacked Residential	SDP	SDP	SDP	SDP	NP	NP	SCUP
Restaurant or Tavern	SDP	SDP	SDP	NP	NP	NP	NP
Retail	* ADD						
Office	SDP	SDP	NP	NP	NP	NP	NP
Hotel	SDP**	SDP/***	NP	NP	NP	NP	NP
Structures and Facilities	SDP	SDP	SDP	SDP	SDP	NP*	NP*
Public Parks	SDP	SDP	SDP	SDP	SDP	SDP	SDP
Utilities Government Facilities, Roads, etc.	SDP	SDP	SDP	SDP	SDP	SDP	SDP
Bulkheads and Similar Structures	SDP	SDP	SDP	SDP	SDP	NP*	NP
Breakwaters	SDP	SDP	SCUP	SCUP	NP	NP*	NP*
Dredging	SDP	SDP	SDP	SDP	SDP	NP*	NP*
Filling	SCUP	SCUP	SCUP	SCUP	SCUP	NP*	NP*
Public Access Pier or Boardwalk	SDP	SDP	SDP	SDP	NP	NP*	NP*
Land Surface Modification	SDP	SDP	SDP	SDP	SDP	SCUP	SCUP

SDP: Substantial Development Permit
 SCUP: Shoreline Conditional Use Permit
 NP: Not Permitted

NP* May be permitted as an accessory to public parks if approved through a S.C.U.P.

* This use is exempt from Substantial Development Permit requirements if this is for construction of only one detached unit built by an owner, lessee, or contract purchaser who will be occupying the residence, in accordance with WAC 173-14-040(g), as amended.

NOTE: Hydraulic permits may also be required from the State Department of Fisheries and Wildlife for development or activities located waterward of the ordinary high water mark.

** Subject to the same use regulations as Retail or Office use in this shoreline environment

*** May be permitted subject to KMC 24.05.205

ORDINANCE NO. 3950
PUBLICATION SUMMARY

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PLANNING, LAND USE, AND SHORELINES, AMENDING PORTIONS OF THE FOLLOWING CHAPTERS OF TITLE 24 (ENVIRONMENTAL PROCEDURES) OF THE KIRKLAND MUNICIPAL CODE: CHAPTER 24.05 – SHORELINE MASTER PROGRAM (FILE NO. ZON04-00004) AND REPEALING ORDINANCE NO. 3945.

Section 1. Identifies the specific amendments to Ordinance 3719, as amended, the Kirkland Zoning Code, and Chapter 24.05, the Shoreline Master Program.

Section 2. Addresses severability.

Section 3. Repeals Ordinance 3945.

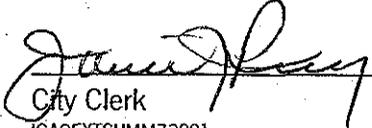
Section 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.088.017 Kirkland Municipal Code and establishes the effective date as five days after publication of said summary, or upon the date of a letter to the City of Kirkland from the Washington State Department of Ecology, or of a rule of the Department, approving the Shoreline Master Program amendments adopted by this ordinance, whichever occurs last in time.

Section 5. Directs the City Clerk to certify and forward a complete certified copy of this ordinance 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 regular meeting on the 6th day of July, 2004.

I certify that the foregoing is a summary of Ordinance 3950 approved by the Kirkland City Council for summary publication.

Attest:



City Clerk
ICAOEXTSUMM73001



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

July 7, 2006

RECEIVED

JUL 11 2006

AM
PLANNING DEPARTMENT
BY

City of Kirkland
Department of Planning and Community Development
Attn: Jeremy McMahan, Planning Supervisor
123 Fifth Avenue
Kirkland, WA 98033-6189

Dear Jeremy:

**RE: Request for Department of Ecology's Feedback on City of Kirkland
Proposed Amendment to existing Shoreline Master Program (SMP)**

Thank you for your email dated May 25, 2006 requesting Ecology feedback on the City's proposed amendment to their existing Shoreline Master Program (SMP). It is my understanding that the City would like to request a "less than comprehensive" amendment limited to the "Urban Mixed 1" (UB1) shoreline environment to reduce code inconsistencies between the City's downtown zoning regulations and the existing SMP. The amendment would consist of the following three changes:

1. Eliminate minimum lot size requirements: current SMP regulations require a minimum of 7200 square feet with 1 unit/1800 square feet per dwelling unit;
2. For consistency with the downtown zoning code, eliminate the existing SMP requirement for 30% view corridor;
3. Also for consistency with the downtown zoning code, add "hotel" as a permitted use in the UB1 shoreline environment.

HISTORY:

Initially, the City submitted a request for the amendment to Ecology on July 16th, 2004. Prior to submittal to Ecology the City's Planning Commission held a public study session on March 11, 2004 considering the amendments, which were ultimately adopted by the City Council on July 6, 2004¹. Upon receipt of the City's requested SMP amendment, Ecology informed the City that the following information was required prior to accepting the SMP amendment:

1. Shoreline Inventory of the UB1 environment area pursuant to WAC 173-26-201 Including a cumulative impact analysis concluding no net loss of shoreline ecological functions.

¹ Ordinance 3950 replacing Ordinance 3945 – proposing the identified changes to the existing City of Kirkland's SMP.



2. Shoreline Restoration plan pursuant to WAC 173-26-186(8)(c);
3. Further explanation (narrative and visual) of the affect of the changes to the UB1 shoreline environment area considering the proposed changes.

ISSUES/ANALYSIS: (GENERALIZED)

Pursuant to the RCW 90.58.090, Ecology has been mandated to adopt guidelines consistent with the goals of the Washington State Shoreline Management Act. The "guidelines" (WAC 173-26) are intended to be used by local jurisdictions to guide development of regulations administering appropriate use of shorelines within the state.

The first step in evaluating the extent of the amendment is to determine if the proposed changes will qualify as a "less than comprehensive update" or alternatively will need to be considered as a complete update pursuant to WAC 173-26-201. Section 1 - **Applicability** states (emphasis added): *"This section outlines a comprehensive process to prepare or amend a shoreline master program. Local governments shall incorporate the steps indicated if one or more of the following criteria apply".* Of the listed criteria section (a, d & e) are most relevant to the City's proposed amendment:

- (a) *The master program amendments being considered represent a significant modification to shoreline management practices within the local jurisdiction, they modify more then on environment designation boundary, or significantly add, change or delete use regulations;*
- (d) *There are substantive issues that must be addressed on a comprehensive basis. This may include issues such as salmon recovery, major use conflicts or public access;*
- (e) *The current master program and the comprehensive plan are not mutually consistent;*

Essentially if any part of the proposed amendment meets the above listed criteria, then the update is considered comprehensive and is required to be reviewed in compliance with the full extent of the guidelines. Alternatively, if the amendment is determined to not meet the above listed criteria, then the "less than comprehensive update" can be prepared to conform to sections of WAC 173-26-030 through 173-26-160.

Because the City is proposing to eliminate the required 30% view corridors within the UM1 shoreline environment, the proposed amendment has the potential to affect (visual) public access to the shoreline. WAC 173-26-221 (emphasis added) states that public access includes, *"...the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the water of the state, and to view the water and the shoreline from adjacent location"*

Further the guidelines - WAC 173-26-221(4) (d), state (emphasis added):

- (i) *Based on the public access planning described in (c) of this subsection, establish policies and regulations that protect and enhance both physical and visual public access...The master program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety.*

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July 7, 2006
City of Kirkland - SMP amendment
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It is understood that existing structures within the UM1 shoreline do not currently conform to the existing SMP regulation requiring a 30% view corridor; however redevelopment of these structures would require consistency with the applicable SMP regulations. Ecology also understands the City's position that public access is already provided along almost the entire shoreline length of the subject environment designation. However, the above referenced sections of the guidelines suggest a "diversity" of public access identifying both "physical and visual public access" to the shoreline (173-26-221(4) (d) i).

Alternatively, the guidelines provide exceptions to "uniform public access requirements to all developments", subject to the provisions identified in WAC 173-26-221(4) (c):

Planning process to address public access. Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development.

WAC 173-26-221(4) (B) & (iv) provide additional standards when considering alternative public access requirements:

(B): Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable. In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall consider alternate methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.

(iv): Adopt provisions, such as maximum height limits, setbacks, and view corridors, to minimize the impacts to existing views from public property or substantial numbers of residences. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.

Pursuant to the above referenced sections, the City might be able to propose alternative public access standards to the 30% view corridor requirement depending on future visual impacts of upland uses (residential or public areas) and identification of comparable alternative public access requirements.

CONCLUSIONS:

Based on the standards and policies listed above from the guidelines, Ecology would not be able to review the proposed SMP amendment as "less than comprehensive". Specifically, the potential for a significant change in public access requirements pertaining to the proposed elimination of the existing 30% view corridor within the UB1 shoreline environment would be considered by Ecology as a policy change requiring a comprehensive review. However, Ecology

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would encourage the City to continue to consider these changes for consistency with the guidelines during the comprehensive SMP update that is currently underway. Ecology would also like to offer assistance in formation of a technically sound and objective criteria to evaluate the potential public access (view) impacts of the proposed change.

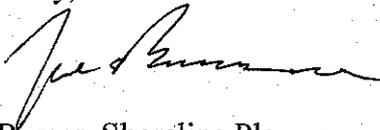
Prior to adoption of the updated SMP, Ecology would also suggest that proposals within the UB1 zone that are not able to meet the applicable regulations because of physical constraints such as lot size etc, be considered on a case-by-case basis under review of either a shoreline variance (VAR) or condition use permit (CUP).

For example, because "hotel(s)" are not listed as a permitted, prohibited, or conditional uses within the existing SMP, but are allowed in the underlying zoning, future proposals could potentially be considered after review and approval of a shoreline CUP. Similarly, as mentioned above, future proposals that because of physical constraints involving bulk or dimensional standards listed in the SMP, may qualify for a shoreline VAR subject to compliance with WAC 173-27-170 (VAR review criteria) as well as other relevant sections of the SMP and zoning code.

Ecology can appreciate the City's efforts to align the current SMP with the underlying zoning regulations. However, Ecology has been mandated to focus policy review of shoreline master programs to ensuring compliance with the guidelines (WAC 173-26) and the Shoreline Management Act RCW 90.58 and not to consider consistency with locally adopted land-use regulations as justification for variability shoreline master program standards.

We look forward to continuing discussion of the proposed amendments during review of the comprehensive master program update that the City is currently working on. Please do not hesitate to contact me if I can be of any further assistance on this issue.

Sincerely,



Joe Burcar, Shoreline Planner
Department of Ecology - NW Regional Office

JB:cja

cc: Peter Skowlund, Ecology
Geoff Tallent, Ecology
Paul Stewart, City of Kirkland
Patrice Tovar, City of Kirkland

ORDINANCE NO 4057

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PLANNING, LAND USE, AND SHORELINES, AND REPEALING ORDINANCE NO. 3950 (FILE NO. ZON04-00004).

WHEREAS, following the receipt of a recommendation from the Planning Commission to amend certain sections of the Kirkland Shoreline Master Program, the City Council passed Ordinance No. 3950 on July 6, 2004, which included the proposed amendments; and

WHEREAS, under RCW 90.58.090, the State of Washington Department of Ecology (DOE) must approve proposed amendments to local governments' Shoreline Master Programs; and

WHEREAS, the City submitted the proposed Shoreline Master Program amendments to DOE for approval on July 16, 2004; and

WHEREAS, DOE concluded that the proposed 2004 amendments should be included for DOE review in the comprehensive Shoreline Master Program update that the City is currently undertaking;

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

Section 1. Ordinance No. 3950, passed by the Kirkland City Council on July 6, 2004, is hereby repealed.

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

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2006..

Signed in authentication thereof this ____ day of _____, 2006.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney