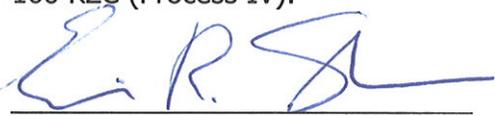


Fact Sheet

Action Sponsor and Lead Agency	City of Kirkland Department of Planning and Community Development
Proposed Action	Legislative adoption of Amendments to Kirkland Zoning Code Chapter 95 – Tree Management and Required Landscaping pursuant to Chapter 160 KZC (Process IV).
Responsible Official	 Eric R. Shields, AICP Planning Director
Contact Person	Jon Regala, Senior Planner City of Kirkland (425) 587-3255.
Required Approvals	Adoption by Kirkland City Council Approval by Houghton Community Council for amendments within its jurisdiction.
Location of Background Data	File ZON08-00016 City of Kirkland Department of Planning and Community Development 123 Fifth Avenue Kirkland, WA 98033
Date of Issuance	October 19, 2009



City of Kirkland

Process IV – Zoning Code Amendments to KZC Chapter 95 – Tree Management and Required Landscaping

EIS Addendum dated October 19, 2009
File No. ZON08-00016

I. Background

The City of Kirkland proposes to amend Kirkland Zoning Code Chapter 95 – Tree Management and Required Landscaping. The amendments will be reviewed using the Chapter 160 KZC, Process IV with adoption by City Council and final approval by the Houghton Community Council as the amendments are within their jurisdiction.

This Environmental Impact Statement (EIS) Addendum is intended to fulfill the environmental requirements pursuant to the State Environmental Policy Act (SEPA) for the proposed Zoning Code amendment.

II. EIS Addendum

According to the SEPA Rules, an EIS addendum provides additional analysis and/or information about a proposal or alternatives where their significant environmental impacts have been disclosed and identified in a previous environmental document (WAC 197-11-600(2)). An addendum is appropriate when the impacts of the new proposal are the same general types as those identified in the prior document, and when the new analysis does not substantially change the analysis of significant impacts and alternatives in the prior environmental document (WAC 197-11-600(4)(c), -625 and -706).

The City published the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update*. This EIS addressed the 2004 Comprehensive Plan, Zoning Code and Zoning Map updates required by the Washington State Growth Management Act (GMA). Elements of the environment addressed in this EIS include population and employment growth, earth resources, air quality, water resources, plants and animals, energy, environmental health (noise, hazardous materials), land use, socioeconomics, aesthetics, parks/recreation, transportation, and public services/utilities.

This addendum to the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update* is being issued pursuant to WAC 197-11-625 to meet the City's SEPA responsibilities. The EIS evaluated plan alternatives and impacts that encompass the same general policy direction, land use pattern, and environmental impacts that are expected to be associated with the proposed amendments to Kirkland Zoning Code

Chapter 95 – Tree Management and Required Landscaping as discussed herein. While the specific location, precise magnitude, or timing of some impacts may vary from those estimated in the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update*, they are still within the range of what was evaluated and disclosed there. No new significant impacts have been identified.

III. Non-Project Action

Decisions on the adoption or amendment of zoning ordinances are referred to in the SEPA rules as “non-project actions” (WAC 197-11-704(2)(b)). The purpose of an EIS in analyzing a non-project action is to help the public and decision-makers identify and evaluate the environmental effects of alternative policies, implementation approaches, and similar choices related to future growth. While plans and regulations do not directly result in alteration of the physical environment, they do provide a framework within which future growth and development – and resulting environmental impacts – will occur. Both the adoption of the Comprehensive Plan evaluated in the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update* and eventual action on the amendments to Kirkland Zoning Code Chapter 95 – Tree Management and Required Landscaping are “non-project actions”.

IV. Environmental Analysis

The *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update* evaluated the environmental impacts associated with adoption of proposed policies and land use designations. The plan’s policies are intended to accomplish responsibilities mandated by the Washington State Growth Management Act (GMA), and to mitigate the impacts of future growth. In general, environmental impacts associated with the proposed Zoning Code amendment are similar in magnitude to the potential impacts disclosed in the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update*. As this proposal is consistent with the policies and designations of the Comprehensive Plan and the environmental impacts disclosed in the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update*, no additional or new significant impacts beyond those identified in the EIS for the Comprehensive Plan are anticipated.

V. Description of the Proposal

The proposed changes to Kirkland Zoning Code (KZC) Chapter 95 – Tree Management and Required Landscaping are summarized as follows:

- Consolidating City park and street tree regulations currently found in Kirkland Municipal Code Title 19 into KZC Chapter 95
- Reorganizing the existing code language within the chapter
- Clarifying tree removal standards when it is or is not associated with development
- Revising code language to require a permit for tree removal not associated with development
- Clarifying existing definitions and terms
- Allowing for phased review of a tree retention plan as part of a short plat review process

- Developing modification criteria to address subsequent changes to an established tree retention plan
- Changes regarding tree pruning and the number of trees to remain on a property

VI. Public Involvement

The Houghton Community Council will hold a public meeting October 26, 2009 and the Planning Commission will hold a hold public hearing on November 5, 2009. Public notice of the amendment and the public hearing and meeting is being provided in accordance with State law. The City Council will take final action on the proposal in December 2009 or January 2010. All dates are subject to change.

VII. Conclusion

This EIS Addendum fulfills the environmental review requirements for the proposed amendments to Kirkland Zoning Code (KZC) Chapter 95 – Tree Management and Required Landscaping. The impacts of the proposal are within the range of impacts disclosed and evaluated in the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update*; no new significant impacts have been identified. Therefore, issuance of this EIS Addendum is the appropriate course of action.

Attachment: Draft KZC Chapter 95 – Tree Management and Required Landscaping

1  - Text moved from within KZC Chapter 95

2  - Text moved from KMC Title 19

3 ~~XYZ~~ XYZ – Reflects changes made to original content

4

5 KIRKLAND ZONING CODE CHAPTER 95 – TREE MANAGEMENT AND 6 REQUIRED LANDSCAPING

7

8 95.05 Purpose and Intent

9 1. Trees and other vegetation are important elements of the physical environment. They are
10 integral to Kirkland’s community character and protect public health, safety and general
11 welfare. Protecting, enhancing, and maintaining healthy trees and vegetation are key
12 community values. Comprehensive Plan Policy NE-3.1 describes working towards ~~A goal is~~
13 ~~to achieve~~ achieving ~~a Citywide an overall~~ tree canopy coverage of 40 percent ~~for the~~
14 ~~community~~. The many benefits of healthy trees and vegetation contribute to Kirkland’s
15 quality of life by:

16 a. Minimizing the adverse impacts of land disturbing activities and impervious surfaces
17 such as runoff, soil erosion, land instability, sedimentation and pollution of waterways,
18 thus, reducing the public and private costs for storm water control/treatment and utility
19 maintenance;

20 b. Improving the air quality by absorbing air pollutants, mitigating the urban heat island
21 effect, assimilating carbon dioxide and generating oxygen, and decreasing the impacts
22 of climate change;

23 c. Reducing the effects of excessive noise pollution;

24 d. Providing cost-effective protection from severe weather conditions with cooling effects in
25 the summer months and insulating effects in winter;

26 e. Providing visual relief and screening buffers;

27 f. Providing recreational benefits;

28 g. Providing habitat, cover, food supply and corridors for a diversity of fish and wildlife;
29 and

30 h. Providing economic benefit by enhancing local property values and contributing to the
31 region’s natural beauty, aesthetic character, and livability of the community.

- 1 2. Tree and vegetation removal in urban areas has resulted in the loss to the public of these
2 beneficial functions. The purpose of this chapter is to establish a process and standards to
3 provide for the protection, preservation, replacement, proper maintenance, and use of
4 significant trees, associated vegetation, and woodlands located in the City of Kirkland.

5 The intent of this chapter is to:

- 6 a. Maintain and enhance canopy coverage provided by trees for their functions as
7 identified in KZC [95.05\(1\)](#);
- 8 b. Preserve and enhance the City of Kirkland's environmental, economic, and community
9 character with mature landscapes;
- 10 c. Promote site planning, building, and development practices that work to avoid removal
11 or destruction of trees and vegetation, that avoid unnecessary disturbance to the City's
12 natural vegetation, and that provide landscaping to buffer the effects of built and paved
13 areas;
- 14 d. Mitigate the consequences of required tree removal in land development through on-
15 and off-site tree replacement with the goals of halting net loss and enhancing Kirkland's
16 tree canopy to achieve an overall healthy tree canopy cover of 40 percent City-wide over
17 time;
- 18 e. Encourage tree retention efforts by providing flexibility with respect to certain other
19 development requirements;
- 20 f. Implement the goals and objectives of the City's Comprehensive Plan;
- 21 g. Implement the goals and objectives of the State Environmental Policy Act (SEPA); and
- 22 h. Manage trees and other vegetation in a manner consistent with the City's Natural
23 Resource Management Plan.
- 24 i. ~~Regulate, pP~~ preserve and protect street trees, trees in public parks and trees on other
25 city property.

26 **95.10 Definitions**

27 The following definitions shall apply throughout this chapter unless the context clearly indicates
28 otherwise. Definitions that apply throughout this code are also located in Chapter [5](#) KZC.

29 Caliper – The American Association of Nurserymen standard for trunk measurement of nursery
30 stock. Caliper of the trunk shall be the trunk diameter measured six inches above the ground
31 for up to and including four-inch caliper size and 12 inches above the ground for larger sizes.

32 Critical Root Zone – The area surrounding a tree at a distance from the trunk, which is equal to
33 one foot for every inch of ~~tree-trunk~~ diameter ~~measured at breast height~~ 4.5 feet from grade or
34 otherwise determined by a qualified professional (example: 1' radius per 1" DBH).

1 Crown – The area of a tree containing leaf- or needle-bearing branches.

2 Diameter at Breast Height (DBH) – The diameter or thickness of a tree trunk measured at 4.5
3 feet from the ground. DBH is also known as Diameter at Standard Height (DSH).

4 Dripline – The distance from the tree trunk, that is equal to the furthest extent of the tree's
5 crown.

6 Grove – A group of three or more significant viable trees with overlapping or touching crowns.

7 Hazard Tree - A ~~hazard~~ tree that must meets all the following criteria:

8 1. a tree with a combination of structural defects and/or disease which makes it subject to
9 a high probability of failure;

10 2. ~~and it~~ is in proximity to moderate- to high frequency targets (of persons or property that
11 can be damaged by tree failure); and

12 3. —The hazard condition of the tree cannot be lessened with reasonable and proper
13 arboricultural practices nor can the target be removed.

14 Impact – A condition or activity that affects a part of a tree including the trunk, branches, and
15 critical root zone.

16 ~~Landmark Tree – A tree or group of trees designated as such because of its exceptional value to~~
17 ~~the residents of the City.~~

18 Limit of Disturbance – The boundary between the ~~area of minimum protection~~ protected area
19 around a tree and the allowable site disturbance as determined by a qualified professional
20 measured in feet from the trunk.

21 Nuisance Tree - A ~~nuisance~~ tree that must meets any of the following criteria:

22 1. ~~Tree it~~ is causing obvious, physical damage to private or public structures, including but
23 not limited to: sidewalk, curb, road, driveway, parking lot, building foundation, roof; or

24 2. ~~Tree h~~ has been damaged by past maintenance practices, that cannot be corrected with
25 proper arboricultural practices. ; ~~or 3.~~ —The problems associated with the tree must be
26 such that they cannot be corrected by any other reasonable practice. Including but not
27 limited to the following:

28 a) Pruning of the crown or roots of the tree and/or small modifications to the site
29 including but not limited to a driveway, parking lot, patio or sidewalk to alleviate the
30 problem.

31 b) Pruning, bracing, or cabling to reconstruct a healthy crown.

32 Public Works Official – Designee of the Public Works Director

1 Qualified Professional – An individual with relevant education and training in arboriculture or
2 urban forestry, having two or more of the following credentials:

- 3 • International Society of Arboriculture (ISA) Certified Arborist;
- 4 • Tree Risk Assessor Certification (TRACE) as established by the Pacific Northwest Chapter
5 of ISA (or equivalent); ~~for tree risk assessments located within critical areas.~~
- 6 • American Society of Consulting Arborists (ASCA) registered Consulting Arborist;
- 7 • Society of American Foresters (SAF) Certified Forester for Forest Management Plans;

8 ~~For tree retention associated with a development permit, a qualified professional must have, in~~
9 ~~addition to the above credentials, a minimum of 3 years experience working directly with the~~
10 ~~protection of trees during construction and, have experience with the likelihood of tree survival~~
11 ~~after construction. A qualified professional must also, and be able to A qualified professional~~
12 ~~must possess the ability to perform tree risk assessments and~~ prescribe appropriate measures
13 ~~necessary~~ for the preservation of trees during land development.

14 Significant Tree – A tree that is at least six inches in diameter at breast height (DBH) as
15 measured at 4.5 from the ground.

16 Significantly Wooded Site – A subject property that has a number of significant trees with
17 crowns that cover at least 40 percent of the property.

18 Site Disturbance – Any development, construction, or related operation that could alter the
19 subject property, including, but not limited to, soil compaction, tree or tree stump removal,
20 road, driveway or building construction, installation of utilities, or grading.

21 Specimen Tree – A viable tree that is considered in very good to excellent health and free of
22 major defects, as determined by the City's Urban Forester.

23 Street Tree - A tree located within the street-public right-of-way; provided, that if the trunk of
24 the tree straddles the boundary line of the street-public right-of-way and the abutting property,
25 it shall be considered to be on the abutting property and subject to the provisions of ~~the~~
26 Kirkland Zoning Code this chapter.

27 ~~Target – Person or property that can be damaged by failure of a tree.~~

28 Tree Removal – The removal of a tree, through either direct or indirect actions, including but
29 not limited to: (1) clearing, damaging or poisoning resulting in an unhealthy or dead tree; (2)
30 removal of at least half of the live crown; or (3) damage to roots or trunk that is likely to
31 destroy the tree's structural integrity.

32 Retention Value – The Planning Official's designation of a tree based on information provided by
33 a qualified professional that is one of the following:

- 34 a. Type-1 High, a viable tree, located within required yards and/or required landscape
35 areas. Tree retention efforts shall be directed to the following trees if they are
36 determined to be healthy and windfirm by a qualified professional, and provided the

1 trees can be safely retained when pursuing alternatives to development standards in
2 subsections (4)(a)(2) and (4)(a)(3) of this section pursuant to KZC 95.32:

3 ~~1) Landmark trees;~~

4 ~~2) Specimen trees;~~

5 ~~3) Tree groves and associated vegetation that are to be set aside as preserved groves~~
6 ~~pursuant to KZC 95.5095.51(3);~~

7 ~~4) Trees on slopes of at least 10 percent; or~~

8 ~~5) Trees that are a part of a grove that extends into adjacent property, such as in a~~
9 ~~public park, open space, sensitive area buffer or otherwise preserved group of trees~~
10 ~~on adjacent private property. If significant trees must be removed in these~~
11 ~~situations, an adequate buffer of trees may be required to be retained or planted on~~
12 ~~the edge of the remaining grove to help stabilize.~~

13 b. ~~Type 2 Moderate~~, a viable tree that is to be retained if feasible; or

14 c. ~~Type 3 Low~~, a tree that is either (1) not viable or (2) is in an area where removal is
15 unavoidable due to the anticipated development activity.

16 Viable Tree – A significant tree that a qualified professional has determined to be in good
17 health, with a low risk of failure due to structural defects, is ~~relatively~~ windfirm if isolated or
18 remains as part of a grove, and is a species that is suitable for its location.

19 Wildlife Snag – The remaining trunk of a ~~dying, diseased, or dangerous~~ tree that is intentionally
20 reduced in height and usually stripped of ~~all its~~ live branches.

21 Windfirm – A condition of a tree in which it ~~can~~ withstands average peak local wind speeds and
22 gusts moderate storm winds.

23 95.20 Exemptions

24 The following activities are exempt from the provisions of this chapter:

25 ~~21.~~ Emergency Tree Removal. Any tree on private property that poses an imminent threat to life
26 or property may be removed without first obtaining a tree removal permit. ~~The party~~
27 ~~removing the tree will contact t~~The City must be notified within seven days of the
28 emergency tree removal ~~to provide~~ evidence of the threat for removing the tree for
29 approval of to be considered exemption from this chapter. If the Planning Official
30 determines that the emergency tree removal was not warranted, ~~he or she~~the Planning
31 Official may require that the party obtain a permit and/or require that replacement trees
32 and vegetation be replanted as mitigation.

33 ~~32.~~ Utility ~~Management~~Maintenance. Trees may be removed by the City or utility provider in
34 situations involving immediate danger to life or property, or interruption of services provided
35 by a utility.

1 | ~~43. Commercial Nurseries or Tree Farms. A nursery or tree farm owner may remove trees that~~
2 | ~~are being grown to be sold as Christmas or landscape trees.~~

3 | ~~**19.36.030 Alteration of street trees without prior approval is prohibited.**~~

4 | **95.21 Tree Pruning**

5 | ~~1. **Approval**Tree Pruning of Street Trees. Routine maintenance of street treesIt is the~~
6 | ~~responsibility of the abutting pProperty owners should maintain street trees abutting their~~
7 | ~~property, which may include pruning, watering, and mulching. In order to prune, trim,~~
8 | ~~modify, or alter a street tree, the abutting property owner shall apply for permissiona permit~~
9 | ~~by filing a written application with the City. Pruning shall conform to the most recent~~
10 | ~~version of the American National Standards Institute (ANSI) A300 Part 1 – 2001 Pruning~~
11 | ~~standards or as outlined in an approved Utility Vegetation Management Plan. An application~~
12 | ~~to prune, trim, modify or alter a street tree shall be granted only if the proposed action will~~
13 | ~~improve the health and appearance of the tree. The City reserves the right to have City or~~
14 | ~~utility crews perform routine pruning and maintenance of street trees.~~

15 | ~~An application to prune, trim, modify or alter a street tree shall not be granted if the sole or~~
16 | ~~primary purpose of the proposed action is view enhancement.except in the city's central~~
17 | ~~business district (CBD) zones and in any other specific right-of-way that may be identified~~
18 | ~~by the city. Except for routine maintenance, it is unlawful for any person to prune, trim,~~
19 | ~~modify, alter or damage a street tree without the prior approval of the director of public~~
20 | ~~works or his or her designee; provided, that the city and utility crews may perform routine~~
21 | ~~pruning and maintenance of street trees; and provided further, that an abutting property~~
22 | ~~owner may perform routine pruning and maintenance in accordance with any landscape~~
23 | ~~maintenance agreement or contract with the city. (Ord. 3891 § 2, 2003; Ord. 3866 § 1~~
24 | ~~(part), 2002)~~

25 | 2. **Tree Pruning on Private Property.** ~~Topping or A permit is not required to pruning-prune trees~~
26 | ~~on private property. Pruning which results in the removal of at least half of the live crown~~
27 | ~~will be considered tree removal and subject to the provisions in KZC 95.23. to the extent~~
28 | ~~defined by tree removal in KZC 95.10, .~~

29 | ~~Tree topping is not allowed within the City of Kirkland. If a required-tree required by this~~
30 | ~~Chapter is smaller than six inches in diameter and is topped, it must be replaced pursuant to~~
31 | ~~the standards in KZC 95.55(8)(b). If a tree six inches or larger in diameter is topped, the~~
32 | ~~owner must have a qualified professional develop and carry outimplement a five-year~~
33 | ~~restoration pruning scheduleprogram.~~

34 | **95.23 Tree Removal – Not Associated with Development Activity**

35 | 1. **Introduction.** ~~Tree and vegetation removal in urban areas has resulted in the loss of~~
36 | ~~beneficial functions provided by trees to the public. The majority of tree canopy within the~~
37 | ~~City of Kirkland is on private property. The purpose of this section is to establish a process~~
38 | ~~and standards to slow the loss of tree canopy on private property, contributing towards the~~
39 | ~~City's canopy goals and a more sustainable urban forest.~~

1 2. Trees on City Property; Permit Required for Removal of Trees on Private Property or City
2 Right-of-Way

3 ~~Removal or alteration of trees in public parks and other city property prohibited.~~ It is
4 unlawful for any person ~~(other than City crews)~~ to remove, prune, trim, modify, alter or
5 damage a tree in a public park or on any other ~~city~~ City property; ~~provided, that the city~~
6 ~~may perform routine pruning and maintenance, of such trees and take any actions it deems~~
7 ~~necessary with respect to trees on city property.~~

8 No person, directly or indirectly, shall remove any significant tree on any property within the
9 City, ~~or any tree in the public right-of-way except City right-of-way,~~ without first obtaining a
10 tree removal permit as provided in this chapter, unless the activity is exempted in KZC
11 95.20. ~~Trees in City right-of-way are regulated pursuant to Chapter 19.36 KMC.~~

12 3. Tree Removal Permit Application Form

13 The Department of Planning and Community Development ~~and Public Works Department~~
14 shall establish and maintain a tree removal ~~permit request application~~ form to allow
15 property owners to request ~~Department~~ City review of ~~potentially exempt~~ tree removal for
16 compliance with applicable City regulations. ~~Tree Plan Requirements. The plan can be~~
17 ~~developed by the applicant but may require assistance of a qualified professional.~~ The tree
18 ~~plan removal application form~~ shall include at a minimum the following:

- 19 a. A site plan showing the approximate location of significant trees, their size (DBH) and
20 their species, along with the location of structures, driveways, access ways and
21 easements.
- 22 b. For required replacement trees, a planting plan showing location, size and species of the
23 new trees in accordance to standards set forth in ~~KZC 95.33.3 subsection (5)(c) of this~~
24 ~~section.~~

25 4. Tree Removal Permit Application Procedure and Appeals

26 a. Applicants ~~for a Level IV or V tree plan requesting to remove trees~~ must submit a
27 completed permit application on a form provided by the City. ~~The City shall review the~~
28 ~~application within 21 calendar days; the Planning Official shall review the application~~
29 and either approve, approve with conditions or modifications, deny the application or
30 request additional information. Any decision to deny the application shall be in writing
31 along with the reasons for the denial and the appeal process.

32

33 b. ~~With respect to Level IV and Level V Tree Plans, a~~An applicant may appeal an adverse
34 determination to the Hearing Examiner. A written notice of appeal shall be filed with the
35 ~~Planning Department~~ City within 14 calendar days following the date of distribution of a
36 ~~Planning Official's~~ City's decision. The office of the Hearing Examiner shall give notice of
37 the hearing to the applicant at least 17 calendar days prior to the hearing. The applicant
38 shall have the burden of proving that the ~~Planning Official~~ City made an incorrect
39 decision. Based on the Hearing Examiner's findings and conclusions, ~~he or she~~ the
40 ~~Hearing Examiner~~ may affirm, reverse or modify the decision being appealed.

1
2 **5. Tree Removal Allowances**
3

4 Tree removal not associated with development activity is allowed provided that the tree
5 removal and retention and replacement standards outlined in subsections (5)(a) through
6 (5)(e) below have been met. Below are additional requirements for tree removal.
7

8 **a. Removal of Significant Viable Trees.**
9

10 Any private property owner of developed property may remove up to two significant
11 viable trees from their property within a 12-month period upon approval of a tree
12 removal permit; ~~provided,~~ provided that there is no ~~current-active~~ application for
13 development activity for the site, the trees were not required to be retained as a
14 condition of previous development activity.
15

16 **b. Shoreline Jurisdiction.**
17

18 Properties located with the City's shoreline jurisdiction are subject to additional tree
19 removal and replacement standards if the tree(s) to be removed are located within the
20 required shoreline setback. See KZC Chapter 83 for additional standards.
21

22 **c. Removal of Hazard or Nuisance Trees**

23 Any private property owner seeking to remove any number of significant trees which are
24 a hazard or nuisance from developed or undeveloped property or the public right-of-way
25 shall first obtain upon approval of a tree removal permit and meet the requirements of
26 this subsection. ~~there is no current application for development activity for the site~~
27 significant trees which ~~were required to be retained by a special regulation contained~~
28 in Chapters 15 through 60 KZC; ~~esignated on an approved Tree Retention Plan to be~~
retained pursuant to KZC 95.30;

29 **1) Tree Risk Assessment.** Additional Applicant Requirements-If the nuisance or
30 hazard condition is not obvious ~~An arborist report tree risk assessment~~
31 prepared by a qualified professional explaining how the tree(s) meet the
32 definition of a nuisance or hazard tree is required. ~~fit the criteria in subsection~~
33 (4)(b) or (4)(c) of this section if removal is based on nuisance or hazard and the
34 nuisance or hazard condition is not obvious Removal of nuisance or hazard trees
35 does not count toward the tree removal limit if the nuisance or hazard is
36 supported by a report prepared by a qualified professional and approved by the
37 City.

38 **2) Trees in Critical Areas or Critical Areas Buffers.** For hazard or nuisance trees in
39 (1) easements dedicated to ensure the protection of vegetation; ~~or in~~(2) critical
40 areas, or (3) critical area buffers, a planting plan is required to mitigate the
41 removal of the hazard or nuisance tree. ~~If a tree is considered a nuisance or~~
42 hazard in a critical area or its buffer, ~~t~~The priority action is to create a "snag" or
43 wildlife tree with the subject tree. If creation of a snag is not feasible, then the

1 felled tree shall be left in place unless the Planning Official permits its removal in
2 writing.

3 The intent of preserving vegetation in and near streams and wetlands and in
4 geologically hazardous areas is to support the functions of healthy sensitive
5 areas and sensitive area buffers (see Chapter 90 KZC) and/or avoid disturbance
6 of geologically hazardous areas (see Chapter 85 KZC).

7 The removal of any tree in a critical area or Native Growth Protective Easement
8 will require the planting of a native tree of a minimum of six feet in height in
9 close proximity to where the removed tree was located. Selection of native
10 species and timing of installation shall be coordinated with the Planning Official.
11 ~~For nuisance or hazard trees in critical areas or their buffers, the planting~~
12 ~~plan must propose action to mitigate the hazard or nuisance in accordance to~~
13 ~~standards set forth in subsection (4) of this section. Trees in Critical Areas or~~
14 ~~Critical Area Buffers. The property owner must submit a Level IV Tree Plan to~~
15 ~~City Planning and Community Development Department to trim or remove any~~
16 ~~tree from a critical area or critical area buffer.~~

17 3) Street Trees. Street trees may only be removed if determined to be a hazard or
18 nuisance. If the removal request is for street trees, the Public Works Official
19 may consider whether the tree(s) is-are now, or may be in the future, part of the
20 City's plans for the right-of-way. The City shall require a one-for-one tree
21 replacement in a suitable location. 4. Standards and criteria for approval to
22 remove street tree. An abutting property owner may apply for permission to
23 remove a street tree by filing a written application with the department of public
24 works. An application to remove a street tree shall be reviewed by the director of
25 public works, or his or her designee. The director shall consider the following
26 factors in determining whether to grant or deny the application: (1) whether the
27 tree is a hazard tree or nuisance tree; (2) the location of the tree in the right-of-
28 way; (3) the size and type of tree and whether it constitutes a "significant tree"
29 as defined in the Kirkland Zoning Code; (4) whether the tree is now, or may be
30 in the future, part of the city's plans for the right-of-way; (5) whether the
31 property owner is willing to mitigate the consequences of removal of the tree by
32 planting a new tree or trees in a more suitable location; and (6) any other factor
33 that the director deems relevant or appropriate. Any failure by the applicant or
34 his or her agents to adhere to conditions imposed on tree removal by the city
35 under this chapter shall constitute a violation of this chapter and is subject to
36 enforcement under this chapter. (Ord. 3891 § 3, 2003)

37 ~~b) Tree removal on undeveloped property shall be approved only for hazard or nuisance~~
38 ~~trees pursuant to the criteria in subsections (4)(c) and (4)(d) of this section. The tree removal~~
39 ~~exemptions in KZC 95.20 are not applicable to undeveloped property~~

40 d. Tree Retention and Replacement Requirements

41
42 1) Tree Retention. For single-family homes, cottages, carriage units, two/three-unit
43 homes, one significant viable tree for every 2,500 square feet of land area shall be

1 required to remain on the subject property. When this results in a fraction, the
2 number of trees to remain shall be rounded up to the next whole number.

3
4 2) Tree Replacement.

5
6 a) For every significant tree that is removed and is not required to remain based on
7 subsection (5)(a)(1) above, the City encourages the planting of a tree that is
8 appropriate to the site.

9
10 b) If a tree removal request is for one or both of the last two trees more of the trees
11 required to remain, a one-for-one replacement is required. The replacement tree
12 shall be six feet tall for a conifer and two-inch caliper for deciduous or broad-leaf
13 evergreen tree.

14 c) For all other uses, the required tree replacement will be based on the required
15 landscaping standards in KZC 95.40 through 95.456.

16 e. Forest Management Plan

17 1) A Forest Management Plan is must be submitted for developed, significantly wooded
18 sites (over 40% canopy coverage) of at least 35,000 square feet in size in which tree
19 removal is requested that and is not exempt under Section 95.20 of this Chapter. A
20 Forest Management Plan must be developed by a qualified professional. The Tree
21 Plan and shall include the following:

22 a) A site plan depicting the location of all significant trees (a tree-survey identifying
23 tree locations is not required) with a numbering system of the trees (with
24 corresponding tags on trees in the field). The site plan shall include size (DBH),
25 species, and condition of each tree;

26 b) Identification of trees to be removed, including reasons for their removal and a
27 description of low impact removal techniques pursuant to subsection (42)(e) of
28 this section;

29 c) A reforestation plan that includes location, size, species, and timing of
30 installation;

31 d) A narrative report of prescribed, long-term maintenance activity for the site as
32 outlined in subsection (4)(e)(8) of this section.

33 2) The following Forest Management Plan. For properties proposing tree removal
34 requiring a forest management plan, the following standards shall apply:

35 1a) Trees to remain should be dominant or co-dominant in the stand, healthy and
36 wind-firm.

37 2b) No removal of trees from critical areas and their buffers, unless otherwise
38 permitted by this chapter.

1 | ~~3c)~~ No removal of landmark or specimen trees, unless otherwise permitted by this
2 | chapter.

3 | ~~4d)~~ No removal of healthy trees that would cause trees on adjacent properties to
4 | become hazardous.

5 | ~~5e)~~ The reforestation plan ensures perpetuity of the wooded areas. The size of
6 | planted trees for reforestation shall be a minimum of three feet tall.

7 | ~~6f)~~ Logging operations shall be conducted so as to expose the smallest practical
8 | area of soil to erosion for the least possible time. To control erosion, native
9 | shrubs, ground cover and stumps shall be retained where feasible. Where not
10 | feasible, appropriate erosion control measures to be approved by the City shall
11 | be implemented.

12 | ~~7g)~~ Removal of tree debris shall be done pursuant to Kirkland Fire Department
13 | standards.

14 | ~~8h)~~ Recommended maintenance prescription for retained trees with a specific
15 | timeline for such management.

16 | ~~95.25 Alternative Compliance~~ Sustainable Site Development

17 | All activities regulated by this chapter shall be performed in compliance with the applicable
18 | standards contained in this chapter, unless the applicant demonstrates that alternate measures
19 | or procedures will be equal or superior to the provisions of this chapter in accomplishing the
20 | purpose and intent of this chapter as described in KZC 95.05. ~~Requests to use alternative
21 | measures and procedures shall be reviewed by the Planning Official, who may approve, approve
22 | with conditions, or deny the request. Examples include but are not limited to retention of
23 | specimen or landmark trees or low impact development techniques, including such programs as
24 | Green Building Design or Leadership in Energy and Environmental Design that demonstrate a
25 | significant reduction to stormwater runoff from the site.~~

26 | Applicants requesting alternative compliance shall submit a site assessment report prepared by
27 | a qualified professional detailing how the proposed alternative measures will be equal or
28 | superior to the benefits provided by the established trees to be removed. Qualifying projects
29 | shall implement sustainable site development strategies throughout the construction process as
30 | well as contain measurable performance standards for the techniques used. Examples of
31 | sustainable site development include building placement with minimal site impact, habitat
32 | protection, water conservation, heat island reduction, stormwater flow runoff control and water
33 | quality, and utilization of the site's natural services such as solar and wind. Requests to use
34 | alternative measures and procedures shall be reviewed by the Planning Official, who may
35 | approve, approve with conditions, or deny the request.

36 | ~~95.30 Tree Retention, Protection and Density~~ Associated with Development Activity

37 | 1. Introduction.

1 The City's objective is to retain as many viable trees as possible on a developing site while
2 still allowing the development proposal to move forward in a timely manner. To that end,
3 the City requires approval of a tree retention plan ~~tree permit~~ in conjunction with all
4 development permits resulting in site disturbance and ~~with any proposed~~ for any tree
5 removal on developed sites not exempted by KZC 95.20. This section includes provisions
6 that allow development standards to be modified in order to retain viable significant
7 trees. ~~The intent of this section is to successfully retain desirable all viable trees on~~
8 ~~developing and re-developing sites and to maintain and enhance the tree canopy of~~
9 ~~Kirkland.~~

10 In order to make better decisions about tree retention, particularly during all stages of
11 development, tree ~~removal~~ retention plans ~~permits~~ will require specific information about the
12 existing trees before removal is allowed. ~~Different levels of detail correspond to the scale of~~
13 ~~the project or activity.~~ Specific tree retention plan review standards ~~are~~ provided in this
14 section KZC 95.35(4) and include ~~establish~~ tree retention priorities, ~~and~~ incentives, ~~and~~
15 variations to development standards in order to facilitate preservation of healthy, viable,
16 significant trees.

17 A minimum tree density approach is being used to retain as many significant viable trees as
18 possible with new development activity. The requirement to meet a minimum tree density
19 applies to new single-family homes, cottages, carriage units, two/three-unit homes ~~and~~
20 ~~duplex developments and major redevelopments~~, and new residential subdivisions and short
21 subdivisions. If such a site falls below the minimum density with existing trees,
22 supplemental planting is required. A tree density for existing trees to be retained is
23 calculated to see if new trees are required in order to meet the minimum density for the
24 entire site. Supplemental tree location priority is set as well as minimum size of
25 supplemental trees to meet the required tree density.

26 The importance of effective protection of retained trees during construction is emphasized
27 with specific protection standards in the last part of this section. These standards must be
28 adhered to and included on demolition, grading and building plans as necessary.

29 2. Tree Retention Plan Required

30 ~~a. Requirement Established.~~ An applicant for a tree removal ~~development~~ permit must
31 submit a tree retention plan that complies with this section. A qualified professional may be
32 required to prepare certain components of a tree retention plan at the applicant's expense.
33 If proposed development activities call for more than one tree retention plan
34 ~~level~~ requirement ~~component~~, the more stringent tree retention plan level
35 ~~requirement~~ component with the more stringent requirements shall apply; provided, that the
36 Planning Official may require a combination of tree plan components based on the nature of
37 the proposed development activities. If the proposed activity is not clearly identified in this
38 chapter, the Planning Official shall determine the appropriate tree retention plan
39 requirements.

40 ~~b. Tree Plan and Retention Requirements.~~ The following sets ~~chart in subsection (5) sets~~
41 forth the tree retention plan requirements ~~different tree plans required~~ for development
42 activities ~~or and associated tree~~ removal ~~requests requiring a tree removal permit~~.

1 Applicants for development are encouraged to confer with City staff as early in the design
2 process as possible so that the applicable tree planting and retention concepts can be
3 incorporated into the design of the subject property. ~~Each plan sets forth the required~~
4 ~~components and retention standards for each tree plan.~~ The Planning Official may waive a
5 component ~~for a~~ of the tree retention plan, if he or she determines that the information is
6 not necessary.

7 3. Tree Retention Plan Review

8 Any proposed development of the subject property requiring approval through a building
9 permit, land surface modification permit, and/or demolition permit; or Design Review,
10 Process I, IIA, IIB, or III, described in Chapters 142, 145, 150, 152 and 155 KZC
11 respectively, shall include a Tree Retention Plan to be considered as part of that process.

12 Based on the Tree Retention Plan information submitted by the applicant and the Planning
13 Official's evaluation of the trees relative to the proposed development on the subject
14 property, the Planning Official shall designate each tree as having a high, moderate, or low
15 Retention Value as defined in KZC 95.10 Definitions, for application towards the regulations
16 in this Chapter.

17 4. Tree Retention Plan Components

18 Qualified Professional Reports.— Reports prepared by a qualified professional—The tree
19 retention plan shall contain the following information as specified in the chart in subsection
20 4(5) below, unless waived by the Planning Official:

21 a. A tree inventory containing the following:

- 22 1) Aa numbering system of all existing significant trees on the subject property (with
23 corresponding tags on trees); the inventory must also to include significant trees on
24 adjacent property with driplines extending over the subject property line;
- 25 2) Limits of disturbance (LOD) Measured driplines of all existing significant trees
26 (including approximate LOD of offsite trees with overhanging driplines);
- 27 3) sSize (DBH), species and
- 28 4) Proposed Tree status (trees to be removed or retained)—based on criteria in
29 subsection (2)(c) of this section for all significant trees;
- 30 5) Brief Ggeneral health or condition rating of these trees (i.e.: poor, fair, good,
31 excellent, etc.);
- 32 6) Tree type or species, approximate trunk location, ; and
- 33 7) measured dripline of significant trees that are on adjacent property with driplines
34 extending over the subject property line.

35 b. A site plan depicting the following:

- 36 1) Location of all proposed improvements, including building footprint, access, and
37 utilities, —with applicable setbacks, buffers, and required landscaped areas clearly
38 identified. If a short plat or subdivision is being proposed and the location of all

- 1 proposed improvements cannot be established, a phased tree retention plan review
2 is required as described in subsection (6)(a):
- 3 2) Accurate location of significant trees on the subject property (surveyed locations
4 may be required). ~~The site plan must also include and the~~ approximate trunk
5 location and ~~driplines-critical root zone~~ of significant trees that are on adjacent
6 property with driplines extending over the subject property line:
- 7 3) Trees labeled corresponding to the tree inventory numbering system:
- 8 ~~4) Driplines measured relative to visible site features~~ 4) Location of tree protection
9 measures:
- 10 5) Indicate ~~the~~ limits of disturbance drawn to scale around all trees potentially impacted
11 by site disturbances ~~as a result~~ resulting from grading, demolition, or construction
12 activities (including approximate LOD of offsite trees with overhanging driplines):
- 13 6) Proposed ~~Tree~~ status (trees to be removed or retained) ~~(4)~~ (noted by an 'X' or by
14 ghosting out:
- 15 7) Final plan showing ~~r~~Retained trees and ~~p~~Proposed locations of any supplemental
16 trees_ and any required trees in order to meet tree density or minimum number of
17 trees as outlined in ~~subsections (2)(b)(1)(d) and (2)(b)(1)(e) of this section~~KZC
18 95.33.
- 19 c. An arborist report containing the following:
- 20 1) A complete description of each tree's health, condition, and viability.:
- 21 2) A description of the method(s) used to determine the limits of disturbance (i.e.:
22 critical root zone, root plate diameter, or a case-by-case basis description for
23 individual trees):
- 24 3) Any special instructions ~~specifically outlining any for work within proposed within the~~
25 limits of the disturbance protection area (i.e.: ~~(hand-digging, tunneling, root~~
26 pruning, ~~any grade changes, clearing, monitoring, and aftercare)~~maximum grade
27 change)::
- 28 4) ~~If a~~ For trees is not viable for retention, a description of the reason(s) for removal
29 must be soundly based on poor health, high risk of failure due to structure, defects,
30 unavoidable isolation (windfirmness), or ~~unsuitability~~ of species, etc. and for which
31 no reasonable alternative action is possible ~~must be given~~ (pruning, cabling, etc.)::
- 32 5) Describe ~~The~~ the impact of necessary tree removal to ~~the~~ remaining trees, including
33 those in a grove or on adjacent properties, ~~must also be discussed:~~
- 34 6) For development applications, a discussion of timing and installation of tree
35 protection measures that must include fencing and be in accordance with the tree
36 protection standards as outlined in ~~subsection (6)~~KZC 95.34 of this section; and
- 37 7) The suggested location and species of supplemental trees to be used when required.
38 The report shall include planting and maintenance specifications pursuant to KZC
39 95.45-50 and 95.5051.

- 1 5. Tree Retention Plan. The applicant shall submit a Tree Retention Plan that includes the
2 components identified in the following chart based on the proposed development activity.

3 **TREE RETENTION PLAN (new chart)**

Development Activity	Minor ⁽¹⁾⁽³⁾ - Single-Family, or two attached, detached, or stacked dwelling units, and related demolition and land surface modification applications	Major ⁽²⁾⁽³⁾ Single-Family, or two attached, detached, or stacked dwelling units, and related demolition and land surface modification applications	Multi-Family, Commercial, any other use other than residential, and related demolition and land surface modification applications	Short Plat, Subdivisions, <u>cottages, carriage units, two/three-unit homes</u> , and related demolition and land surface modification applications (see KZC 95.30.6.a - Phased Review for additional standards)
Required Components				
TREE INVENTORY AS DESCRIBED IN KZC 95.3530.4.A FOR:				
All significant trees on the subject property		X	X	X
Significant trees potentially impacted by proposed development activity	X			
SITE PLAN AS DESCRIBED IN KZC 95.30.4.B TO INCLUDE:				
Surveyed tree locations if required by the Planning Official		X	X	
Surveyed tree locations				X
A final landscape plan showing retained trees			X	
REQUIREMENTS IN KZC 95.3530.42.C SHALL BE PREPARED BY A QUALIFIED PROFESSIONAL AND APPLY TO:				
Significant trees within required yards or within 10 feet of any side property line		X		
Significant trees potentially impacted by proposed development activity as determined by the Planning Official			X	
Proposed removal of trees with a High Retention Value in required landscaping areas			X	
All significant trees				X
TREE RETENTION STANDARDS				
Applicant is encouraged to retain viable trees	X ⁽⁴⁾			

Retain and protect trees with a High Retention Value to the maximum extent possible		X ⁽⁴⁾	X ⁽⁴⁾	X ⁽⁴⁾
Retain and protect trees with a Moderate Retention Value if feasible		X	X	X
Preservation and maintenance agreements pursuant to KZC 95.51. are required for all remaining trees on the subject property	X	X	X	X ⁽⁵⁾
TREE DENSITY				
Tree density requirements shall apply as required in KZC 95.33		X		X
A minimum of two trees must be on the lot following the requirement set forth in KZC 95.33.4	X			
LANDSCAPING				
Preserved trees in required landscaping areas shall apply toward required landscaping requirements			X	

- 1 (1) Applicable when new development, redevelopment, or development in which the total
2 square footage of the proposed improvements is ~~more-less~~ than 50 percent of the total
3 square footage of the existing improvements on the subject property
- 4 (2) Applicable when new development, redevelopment, or development in which the total
5 square footage of the proposed improvements is more than 50 percent of the total
6 square footage of the existing improvements on the subject property
- 7 (3) For lots ~~from-created through~~ a short subdivision, subdivision, or Planned Unit
8 Development with an approved Tree ~~Retention Plan-HH~~, ~~the tree information shall be~~
9 ~~transferred over and~~ the applicant must comply with the ~~applicable~~ Tree ~~Retention Plan~~
10 ~~approved with the short subdivision, subdivision, or Planned Unit Development HH~~
11 ~~requirements unless subsection (6)(a) Phased Review below applies.~~
- 12 (4) To retain ~~trees with a High Retention Value~~ ~~Type 1 trees in required yards~~, the applicant
13 shall pursue, where feasible, applicable variations in the development standards of this
14 code as outlined in ~~subsections (4)(a)(2) and (4)(a)(3)~~ ~~KZC 95.32~~ of this ~~section~~ ~~chapter~~.
- 15 (5) Prior to short plat or subdivision recording
- 16
- 17 6. Additional Tree Retention Plan Standards for Short Plat and Subdivisions
- 18 a. Phased Review.

1 1) If during, the short plat or subdivision review process, the location of all proposed
2 improvements, including the building footprint, utilities, and access was not able to be
3 established, the applicant may submit a Tree Retention Plan that addresses trees only
4 affected by the known improvements at the time of application. Tree removal shall be
5 limited to those affected areas.

6 2) A new Tree Retention Plan shall be required at each subsequent phase of the project as
7 more information about the location of the proposed improvements is known subject to all of
8 the requirements in KZC 95.30.

9 b. Modifications to Tree Retention Plan for Short Plats and Subdivisions. A Tree Retention Plan
10 modification request shall contain information as determined by the Planning Official based on
11 the requirements in KZC 95.30.5 Tree Retention Plan. The fee for processing a modification
12 request shall be established by City ordinance.

13 For Tree Retention Plans approved during the short plat or subdivision review process that
14 established the location of all proposed improvements, including the building footprint, utilities,
15 and access, a modification to the Tree Retention Plan may be approved as follows:

16 1) Modification - General. The Planning Official may approve minor modifications to the
17 approved Tree Retention Plan in which the minimum tree density credits associated with
18 trees identified for retention are not decreased.

19 2) Modification Prior to Tree Removal. The Planning Official may approve a modification
20 request to decrease the minimum number of tree density credits associated with trees
21 previously identified for retention if:

22 a) Trees inventoried in the original Tree Retention Plan have not yet been removed; and

23 b) The Planning Official shall not approve or deny a modification pursuant to this section
24 without first providing notice of the modification request consistent with the noticing
25 requirements for the short plat.

26 3) Modification after Tree Removal. A modification request is required to decrease the
27 minimum number of tree density credits associated with trees previously identified for
28 retention after which trees inventoried in the original Tree Retention Plan have already been
29 removed. Such a request may be approved by the Hearing Examiner only if the following are
30 met:

31 a) The need for the modification was not known and could not reasonably have been known
32 before the tree retention plan was approved;

33 b) The modification is necessary because of special circumstances which are not the result
34 of actions by the applicant regarding the size, shape, topography, or other physical
35 limitations of the subject property relative to the location of proposed and/or existing
36 improvements on or adjacent to the subject property;

37 c) There is no practicable or feasible alternative development proposal that results in fewer
38 additional tree removals;

1 d) The Hearing Examiner shall not approve or deny a modification pursuant to this section
2 without the Planning Official first providing notice of the modification request consistent
3 with the noticing requirements for the short plat and providing opportunity for comments
4 for consideration by the Hearing Examiner; and-

5 e) Said comment period shall not be less than sevenfourteen calendar days.

6 **95.32 - Incentives and Variations to Development Standards**

7 In order to retain trees, the applicant should pursue provisions in Kirkland's codes that allow
8 development standards to be modified. Examples include but are not limited to number of
9 parking stalls, right-of-way improvements, lot size reduction under Chapter 22.28 KMC, lot line
10 placement when subdividing property under KMC Title 22, Planned Unit Developments, and
11 required landscaping, including buffers for lands use and parking/driving areas.

12 Requirements of the Kirkland Zoning Code may be modified by the Planning Official as outlined
13 below when such modifications would further the purpose and intent of this chapter as set forth
14 in KZC 95.05 and would involve ~~Type 1~~ trees with a High Retention Value.

- 15 1. Common Recreational Open Space. Reductions or variations of the area, width, or
16 composition of required common recreational open space, may be granted.
- 17 2. Parking Areas and Access. Variations in parking lot design and/or access driveway
18 requirements may be granted when the Public Works and Planning Officials both determine
19 the variations to be consistent with the intent of City policies and codes.
- 20 3. Required Yards. Initially, the applicant shall pursue options for placement of required yards
21 as permitted by other sections of this code, such as selecting one front required yard in the
22 RSX zone and adjusting side yards in any zone to meet the 15-foot total as needed for each
23 structure on the site. The Planning Official may also reduce the front or side required yards
24 provided that:
 - 25 a. No required side yard shall be less than five feet; and
 - 26 b. The required front yard shall not be reduced by more than five feet in residential zones.
27 There shall not be an additional five feet of reduction beyond the allowance provided for
28 covered entry porches.
- 29 4. Stormwater. Requirements pertaining to stormwater may be varied if approved by the Public
30 Works Official under KMC 15.52.060.
- 31 5. Additional Variations. In addition to the variations described above and the minimum tree
32 density requirements in KZC 95.33 below, the Planning Official is authorized to require site
33 plan alterations to retain ~~Type 1~~ trees with a High Retention Value. Such alterations include
34 minor adjustments to the location of building footprints, adjustments to the location of
35 driveways and access ways, or adjustment to the location of walkways, easements or
36 utilities. The Planning Official and the applicant shall work in good faith to find reasonable
37 solutions.

95.33 - Tree Density Requirement

~~a. Minimum Tree Density Requirement Established.~~ The required minimum tree density is 30 tree credits per acre for single-family, duplex (includes detached units), short plats, and/or subdivisions and associated demolition and land surface modification. development requiring a Tree Plan I — Major and Tree Plan III. For individual lots in a short subdivision or subdivision with an approved Tree Retention Plan—II, the tree density shall be calculated ~~based on the entire~~ for each lot within the short plat or subdivision. The tree density may consist of existing trees pursuant to the priority established in ~~subsection (4)(a)(1) of this section~~ KZC 95.30.2, or supplemental trees or a combination of existing and supplemental trees pursuant to subsection ~~(5)(e)(2)~~ of this section. Existing trees transplanted to an area on the same site shall not count toward the required density unless approved by the Urban Forester based on transplant specifications provided by a qualified professional that will ensure a good probability for survival.

1. Tree Density Calculation. For the purpose of calculating required minimum tree density, City public right-of-way, ~~and~~ areas to be dedicated as City public right-of-way, and vehicular access easements not included as lot area with the approved short plat shall be excluded from the area used for calculation of tree density.

Tree density calculation for existing individual trees:

- a. Diameter breast height (DBH) of the tree shall be measured in inches.
- b. The tree credit value that corresponds with DBH shall be found in Table 95.~~3533~~.1.

Table 95.~~3533~~.1

Tree Density for Existing Significant Trees

(Credits per minimum diameter – DBH)

DBH	Tree Credits	DBH	Tree Credits	DBH	Tree Credits
3 – 5"	0.5				
6 – 10"	1	24"	8	38"	15
12"	2	26"	9	40"	16
14"	3	28"	10	42"	17
16"	4	30"	11	44"	18
18"	5	32"	12	46"	19
20"	6	34"	13	48"	20
22"	7	36"	14	50"	21

Example: a 7,200-square-foot lot would need five tree credits ($7,200/43,560 = 0.165 \times 30 = (4.9)$ or five). The density for the lot could be met with ~~a one existing~~ 16-inch tree and one ~~existing~~ six-inch tree ~~existing~~ on-site.

- 1 2. Supplemental Trees Planted to Meet Minimum Density Requirement. For sites and activities
2 requiring a minimum tree density and where the existing trees to be retained do not meet
3 the minimum tree density requirement, supplemental trees shall be planted to achieve the
4 required minimum tree density.
- 5 3. Tree Location. In designing a development and in meeting the required minimum tree
6 density the trees shall be planted in the following order of priority:
- 7 a. On-Site. The preferred locations for new trees are:
- 8 1) In preserved groves, critical areas or their buffers.
- 9 2) Adjacent to stormwater facilities as approved by Public Works under KMC 15.52.060.
- 10 3) Entrance landscaping, traffic islands and other common areas in residential
11 subdivisions.
- 12 4) Site perimeter ~~Site Perimeter~~— The area of the subject property that is within 10
13 feet from the property line.
- 14 5) On individual residential building lots.
- 15 b. Off-Site. When room is unavailable for planting the required trees on-site, then they may
16 be planted at another approved location in the City.
- 17 c. City Forestry Account. When the Planning Official determines on-site and off-site
18 locations are unavailable, then the applicant shall pay an amount of money
19 approximating the current market value of the supplemental trees into the City forestry
20 account.
- 21 4. Minimum Size and Tree Density Value for Supplemental Trees. The required minimum size
22 of the supplemental tree worth one tree credit shall be six feet tall for a conifer and two-
23 inch caliper for deciduous or broad-leaf evergreen tree. Additional credits may be awarded
24 for larger supplemental trees. The installation and maintenance shall be pursuant to KZC
25 95.45-95.50 and 95.50-95.51 respectively.

26 **95.34 - Tree Protection during Development Activity**

27 Prior to development activity or initiating tree removal on the site, vegetated areas and
28 individual trees to be preserved shall be protected from potentially damaging activities pursuant
29 to the following standards:

- 30 1. Placing Materials near Trees. No person may conduct any activity within the protected area
31 of any tree designated to remain, including, but not limited to, operating or parking
32 equipment, placing solvents, storing building material or soil deposits, or dumping concrete
33 washout or other chemicals. During construction, no person shall attach any object to any
34 tree designated for protection.

- 1 2. Protective Barrier. Before development, land clearing, filling or any land alteration, the
2 applicant shall:
- 3 a. Erect and maintain ~~a~~-readily visible temporary protective tree fencing along the limits of
4 disturbance which completely surrounds the protected area of all retained trees or
5 groups of trees. Fences shall be constructed of chain link and be at least ~~four~~six feet
6 high, unless other type of fencing is authorized by the Planning Official.
- 7 b. Install highly visible signs spaced no further than 15 feet along the entirety of the
8 protective tree fence. Said sign must be approved by the Planning Official and shall state
9 at a minimum "Tree Protection Area, Entrance Prohibited" and provide the City phone
10 number for code enforcement to report violations.
- 11 c. Prohibit excavation or compaction of earth or other potentially damaging activities within
12 the barriers; provided, that the Planning Official may allow such activities approved by a
13 qualified professional and under the supervision of a qualified professional retained and
14 paid for by the applicant.
- 15 d. Maintain the protective barriers in place for the duration of the project until the Planning
16 Official authorizes their removal.
- 17 e. Ensure that any approved landscaping done in the protected zone subsequent to the
18 removal of the barriers shall be accomplished with light machinery or hand labor.
- 19 f. In addition to the above, the Planning Official may require the following:
- 20 1) If equipment is authorized to operate within the critical root zone, cover the areas
21 adjoining the critical root zone of a tree with mulch to a depth of at least six inches
22 or with plywood or similar material in order to protect roots from damage caused by
23 heavy equipment.
- 24 2) Minimize root damage by excavating a two-foot-deep trench, at edge of critical root
25 zone, to cleanly sever the roots of trees to be retained.
- 26 3) Corrective pruning performed on protected trees in order to avoid damage from
27 machinery or building activity.
- 28 4) Maintenance of trees throughout construction period by watering and fertilizing.
- 29 3. Grade.
- 30 a. The grade shall not be elevated or reduced within the critical root zone of trees to be
31 preserved without the Planning Official's authorization based on recommendations from
32 a qualified professional. The Planning Official may allow coverage of up to one half of
33 the area of the tree's critical root zone with light soils (no clay) to the minimum depth
34 necessary to carry out grading or landscaping plans, if it will not imperil the survival of
35 the tree. Aeration devices may be required to ensure the tree's survival.

- 1 b. If the grade adjacent to a preserved tree is raised such that it could slough or erode into
2 the tree's critical root zone, it shall be permanently stabilized to prevent suffocation of
3 the roots.
- 4 c. The applicant shall not install an impervious surface within the critical root zone of any
5 tree to be retained without the authorization of the Planning Official. The Planning
6 Official may require specific construction methods and/or use of aeration devices to
7 ensure the tree's survival and to minimize the potential for root-induced damage to the
8 impervious surface.
- 9 d. To the greatest extent practical, utility trenches shall be located outside of the critical
10 root zone of trees to be retained. The Planning Official may require that utilities be
11 tunneled under the roots of trees to be retained if the Planning Official determines that
12 trenching would significantly reduce the chances of the tree's survival.
- 13 e. Trees and other vegetation to be retained shall be protected from erosion and
14 sedimentation. Clearing operations shall be conducted so as to expose the smallest
15 practical area of soil to erosion for the least possible time. To control erosion, it is
16 encouraged that shrubs, ground cover and stumps be maintained on the individual lots,
17 where feasible.
- 18 4. Directional Felling. Directional felling of trees shall be used to avoid damage to trees
19 designated for retention.
- 20 5. Additional Requirements. The Planning Official may require additional tree protection
21 measures that are consistent with accepted urban forestry industry practices.

22 **95.40 Required Landscaping**

- 23 1. User Guide. Chapters [15](#) through 60 KZC containing the use zone charts assign a
24 landscaping category to each use in each zone. This category is either "A," "B," "C," "D," or
25 "E." If you do not know which landscaping category applies to the subject property, you
26 should consult the appropriate use zone chart.

27 Requirements pertaining to each landscaping category are located throughout this chapter,
28 except that Landscaping Category E is not subject to this section.

29 Landscape Categories A, B, C, D, and E may be subject to additional related requirements in
30 the following other chapters:

- 31 a. Various use zone charts, in Chapters [15](#) through 60 KZC, establish additional or special
32 buffering requirements for some uses in some zones.
- 33 b. Chapter [85](#) KZC, Geologically Hazardous Areas, addresses the retention of vegetation on
34 steep slopes.
- 35 c. Chapter [90](#) KZC, Drainage Basins, addresses vegetation within sensitive areas and
36 sensitive area buffers.

- 1 d. Chapter [110](#) KZC and Chapter 19.36 KMC address vegetation within rights-of-way,
2 except for the I-405, SR-520, and Burlington Northern rights-of-way.
- 3 e. KZC [115.135](#), Sight Distance at Intersections, which may limit the placement of
4 landscaping in some areas.
- 5 f. Chapter 22 KMC addresses trees in subdivisions.

6 2. Use of Significant Existing Vegetation.

- 7 a. General. The applicant shall apply subsection KZC ~~95.35(4)~~[95.30.2-Tree Retention Plan](#)
8 [Review Procedure and KZC 95.32-Incentives and Variations to Development Standards](#)
9 to retain existing trees and vegetation in areas subject to the landscaping standards of
10 this section. The Planning Official shall give substantial weight to the retained trees and
11 vegetation when determining the applicant's compliance with this section.
- 12 b. Supplement. The City may require the applicant to plant trees, shrubs, and groundcover
13 according to the requirements of this section to supplement the existing vegetation in
14 order to provide a buffer at least as effective as the required buffer.
- 15 c. Protection Techniques. The applicant shall use the protection techniques described in
16 KZC ~~95.35(6)~~[95.34](#) to ensure the protection of significant existing vegetation.

- 17 3. Landscape Plan Required. In addition to the ~~tree-plan~~[Tree Retention Plan](#) required pursuant
18 to KZC ~~95.35(2)~~[95.30](#), application materials shall clearly depict the quantity, location,
19 species, and size of plant materials proposed to comply with the requirements of this
20 section, and shall address the plant installation and maintenance requirements set forth in
21 KZC ~~95.45-95.50~~ and ~~95.50~~[95.51](#). Plant materials shall be identified with both their scientific
22 and common names. Any required irrigation system must also be shown.

23 **~~95.415-~~ Supplemental Plantings.**

- 24 1. General. The applicant shall provide the supplemental landscaping specified in
25 subsection ~~(5)(b)~~[\(2\)](#) of this section in any area of the subject property that:

- 26 a. Is not covered with a building, vehicle circulation area or other improvement; and
- 27 b. Is not a critical area, critical area buffer, or in an area to be planted with required
28 landscaping; and
- 29 c. Is not committed to and being used for some specific purpose.

- 30 2. Standards. The applicant shall provide the following at a minimum:

- 31 a. Living plant material which will cover 80 percent of the area to be landscaped within
32 two years. If the material to be used does not spread over time, the applicant shall
33 re-plant the entire area involved immediately. Any area that will not be covered with
34 living plant material must be covered with nonliving groundcover.

- 1 b. One tree for each 1,000 square feet of area to be landscaped. At the time of
2 planting, deciduous trees must be at least two inches in caliper and coniferous trees
3 must be at least five feet in height.
- 4 c. If a development requires approval through Process I, IIA, IIB or III as described in
5 Chapters 145, 150, 152 and 155 KZC, respectively, the City may require additional
6 vegetation to be planted along a building facade if:
- 7 1) The building facade is more than 25 feet high or more than 50 feet long; or
8 2) Additional landscaping is necessary to provide a visual break in the facade.
- 9 d. In RHBD varieties of rose shrubs or ground cover along with other plant materials
10 shall be included in the on-site landscaping.
- 11 e. If development is subject to Design Review as described in Chapter 142, the City will
12 review plant choice and specific plant location as part of the Design Review
13 approval. The City may also require or permit modification to the required plant size
14 as part of Design Review approval.

15 **4.95.42 Minimum Land Use Buffer Requirements.**

16 The applicant shall comply with the provisions specified in the following chart and with all
17 other applicable provisions of this chapter. Land use buffer requirements may apply to the
18 subject property, depending on what permitted use exists on the adjoining property or, if no
19 permitted use exists, depending on the zone that the adjoining property is in.

LANDSCAPING CATEGORY ↓	ADJOINING PROPERTY	*Public park or low density residential use or if no permitted use exists on the adjoining property then a low density zone.	Medium or high density residential use or if no permitted use exists on the adjoining property then a medium density or high density zone.	Institutional or office use or if no permitted use exists on the adjoining property then an institutional or office zone.	A commercial use or an industrial use or if no permitted use exists on the adjoining property then a commercial or industrial zone.
	↓				
A		Must comply with KZC <u>95.40(6)(a)</u> <u>subsection (1)</u> (Buffering Standard 1)	Must comply with KZC <u>subsection (1)</u> <u>95.40(6)(a)</u> (Buffering Standard 1)	Must comply with <u>subsection (2)</u> <u>KZC 95.40(6)(b)</u> (Buffering Standard 2)	
B		Must comply with KZC	Must comply with KZC		

	subsection (1) 95.40(6)(a) (Buffering Standard 1)	subsection (1) 95.40(6)(a) (Buffering Standard 1)		
C	Must comply with KZC subsection (1) 95.40(6)(a) (Buffering Standard 1)	Must comply with KZC 95.40(6)(b) subsection (2) (Buffering Standard 2)		
D	Must comply with KZC subsection (2) 95.40(6)(b) (Buffering Standard 2)			
E				
Footnotes:	* If the adjoining property is zoned Central Business District, Juanita Business District, North Rose Hill Business District, Rose Hill Business District, Totem Center or is located in TL 5, this section , KZC 95.40(6) 95.42 does not apply.			

- 1 ~~1. Land Use Buffering Standards. The This chart in subsection (4) of this section~~ establishes
2 which buffering standard applies in a particular case. The following subsections establish the
3 specific requirement for each standard:
- 4 1. For standard 1, the applicant shall provide a 15-foot-wide landscaped strip with a six-foot-
5 high solid screening fence or wall. Except for public utilities, the fence or wall must be
6 placed on the outside edge of the land use buffer or on the property line when adjacent to
7 private property. For public utilities, the fence or wall may be placed either on the outside or
8 inside edge of the landscaping strip. A fence or wall is not required when the land use
9 buffer is adjacent and parallel to a public right-of-way that is improved for vehicular use.
10 See KZC [115.40](#) for additional fence standards. The land use buffer must be planted as
11 follows:
- 12 a. Trees planted at the rate of one tree per 20 linear feet of land use buffer, with
13 deciduous trees of two and one-half inch caliper, minimum, and/or coniferous trees
14 eight feet in height, minimum. At least 70 percent of trees shall be evergreen. The trees
15 shall be distributed evenly throughout the buffer, spaced no more than 20 feet apart on
16 center.
- 17 b. Large shrubs or a mix of shrubs planted to attain coverage of at least 60 percent of the
18 land use buffer area within two years, planted at the following sizes and spacing,
19 depending on type:

- 1) Low shrub – (mature size under three feet tall), one- or two-gallon pot or balled and burlapped equivalent);
 - 2) Medium shrub – (mature size from three to six feet tall), two- or three-gallon pot or balled and burlapped equivalent);
 - 3) Large shrub – (mature size over six feet tall), five-gallon pot or balled and burlapped equivalent).
- c. Living ground covers planted from either four-inch pot with 12-inch spacing or one-gallon pot with 18-inch spacing to cover within two years 60 percent of the land use buffer not needed for viability of the shrubs or trees.
2. For standard 2, the applicant shall provide a five-foot-wide landscaped strip with a six-foot-high solid screening fence or wall. Except for public utilities, the fence or wall must be placed on the outside edge of the land use buffer or on the property line when adjacent to private property. For public utilities, the fence or wall may be placed either on the outside or inside edge of the landscaping strip. A fence or wall is not required when the land use buffer is adjacent and parallel to a public right-of-way that is improved for vehicular use. See KZC [115.40](#) for additional fence standards. The landscaped strip must be planted as follows:
 - a. One row of trees planted no more than 10 feet apart on center along the entire length of the buffer, with deciduous trees of two inch caliper, minimum, and/or coniferous trees at least six feet in height, minimum. At least 50 percent of the required trees shall be evergreen.
 - b. Living ground covers planted from either four-inch pot with 12-inch spacing or one-gallon pot with 18-inch spacing to cover within two years 60 percent of the land use buffer not needed for viability of the trees.
 3. Plant Standards. All plant materials used shall meet the most recent American Association of Nurserymen Standards for nursery stock: ANSI Z60.1.
 4. Location of the Land Use Buffer. The applicant shall provide the required buffer along the entire common border between the subject property and the adjoining property.
 5. Multiple Buffering Requirement. If the subject property borders more than one adjoining property along the same property line, the applicant shall provide a gradual transition between different land use buffers. This transition must occur totally within the area which has the less stringent buffering requirement. The specific design of the transition must be approved by the City.
 6. Adjoining Property Containing Several Uses. If the adjoining property contains several permitted uses, the applicant may provide the least stringent land use buffer required for any of these uses.

- 1 7. Subject Property Containing Several Uses. If the subject property contains more than one
2 use, the applicant shall comply with the land use buffering requirement that pertains to the
3 use within the most stringent landscaping category that abuts the property to be buffered.
- 4 8. Subject Property Containing School. If the subject property is occupied by a school, land use
5 buffers are not required along property lines adjacent to a street.
- 6 9. Encroachment into Land Use Buffer. Typical incidental extensions of structures such as
7 chimneys, bay windows, greenhouse windows, cornices, eaves, awnings, and canopies may
8 be permitted in land use buffers as set forth in KZC [115.115\(3\)\(d\)](#); provided, that:
 - 9 a. Buffer planting standards are met; and
 - 10 b. Required plantings will be able to attain full size and form typical to their species.
- 11 **95.43k- Outdoor use, activity, and storage**
- 12 **Outdoor use, activity, and storage** (KZC [115.105\(2\)](#)) must comply with required land use buffers
13 for the primary use, except that the following outdoor uses and activities, when located in
14 commercial or industrial zones, are exempt from KZC [115.105\(2\)\(c\)\(1\)](#) and [\(2\)\(c\)\(2\)](#) as stated
15 below:
 - 16 1. That portion of an outdoor use, activity, or storage area which abuts another outdoor use,
17 activity, or storage area which is located on property zoned for commercial or industrial use.
 - 18 2. Outdoor use, activity, and storage areas which are located adjacent to a fence or structure
19 which is a minimum of six feet above finished grade; and do not extend outward from the
20 fence or structure more than five feet; provided, that the total horizontal dimensions of
21 these areas shall not exceed 50 percent of the length of the facade or fence (see Plate 11).
 - 22 3. If there is an improved path or sidewalk in front of the outdoor storage area, the outdoor
23 use, activity or storage area may extend beyond five feet if a clearly defined walking path at
24 least three feet in width is maintained and there is adequate pedestrian access to and from
25 the primary use. The total horizontal dimension of these areas shall not exceed 50 percent
26 of the length of the facade of the structure or fence (see Plate 11).
 - 27 4. Outdoor dining areas.
 - 28 5. That portion of an outdoor display of vehicles for sale or lease which is adjacent to a public
29 right-of-way that is improved for vehicular use; provided, that it meets the buffering
30 standards for driving and parking areas in ~~subsections (7)(b)(1)(a) and (7)(b)(1)(b) of this~~
31 ~~section~~[KZC 95.45.1](#); and provided further, that the exemptions of ~~subsection (7)(b)(2) of~~
32 ~~this section~~[KZC 95.45.2](#) do not apply unless it is fully enclosed within or under a building, or
33 is on top of a building and is at least one story above finished grade.
 - 34 6. Outdoor Christmas tree lots and fireworks stands if these uses will not exceed 30 days, and
35 outdoor amusement rides, carnivals and circuses, and parking lot sales which are ancillary
36 to the indoor sale of the same goods and services, if these uses will not exceed seven days.

1 ~~7. Landscaping and Buffering Standards for Driving and Parking Areas.~~ **95.44 Internal**
2 **Parking Lot Landscaping Requirements**

3 ~~a. Landscaping – General.1)~~ The following internal parking lot landscape standards apply to
4 each parking lot or portion thereof containing more than eight parking stalls.

5 1. The parking lot must contain 25 square feet of landscaped area per parking stall planted
6 ~~pursuant to subsections (7)(a)(1)(b) and (c) of this section~~ as follows:

7 ~~2a.~~ The applicant shall arrange the required landscaping ~~required in subsection (7)(a)(1)(a)~~
8 ~~of this section~~ throughout the parking lot to provide landscape islands or peninsulas to
9 separate groups of parking spaces (generally every eight stalls) from one another and
10 each row of spaces from any adjacent driveway that runs perpendicular to the row. This
11 island or peninsula must be surrounded by a six-inch-high vertical curb, be of similar
12 dimensions as the adjacent parking stalls, ~~and planted pursuant to the standards in~~
13 ~~subsection (7)(a)(1)(c) of this section:~~

14 ~~3b.~~ Landscaping shall be installed pursuant to the following standards:

15 ~~a.1)~~ At least one deciduous tree, two inches in caliper or a coniferous tree five feet in
16 height.

17 ~~b.2)~~ Groundcover shall be selected and planted to achieve 60 percent coverage within
18 two years.

19 ~~4c.~~ Exception. The requirements of this subsection do not apply to any area that is fully
20 enclosed within or under a building.

21 ~~52.~~ Rooftop Parking Landscaping. For a driving or parking area on the top level of a structure
22 that is not within the CBD zone or within any zone that requires design regulation
23 compliance, one planter that is 30 inches deep and five feet square must be provided for
24 every eight stalls on the top level of the structure. Each planter must contain a small tree or
25 large shrub suited to the size of the container and the specific site conditions, including
26 desiccating winds, and is clustered with other planters near driving ramps or stairways to
27 maximize visual effect.

28 ~~63.~~ If development is subject to Design Review as described in Chapter 142 KZC, the City will
29 review the parking area design, plant choice and specific plant location as part of the Design
30 Review approval. The City may also require or permit modification to the required
31 landscaping and design of the parking area as part of Design Review approval.

32 ~~95.45.b-~~ **Perimeter Landscape Buffering for Driving and Parking Areas.**

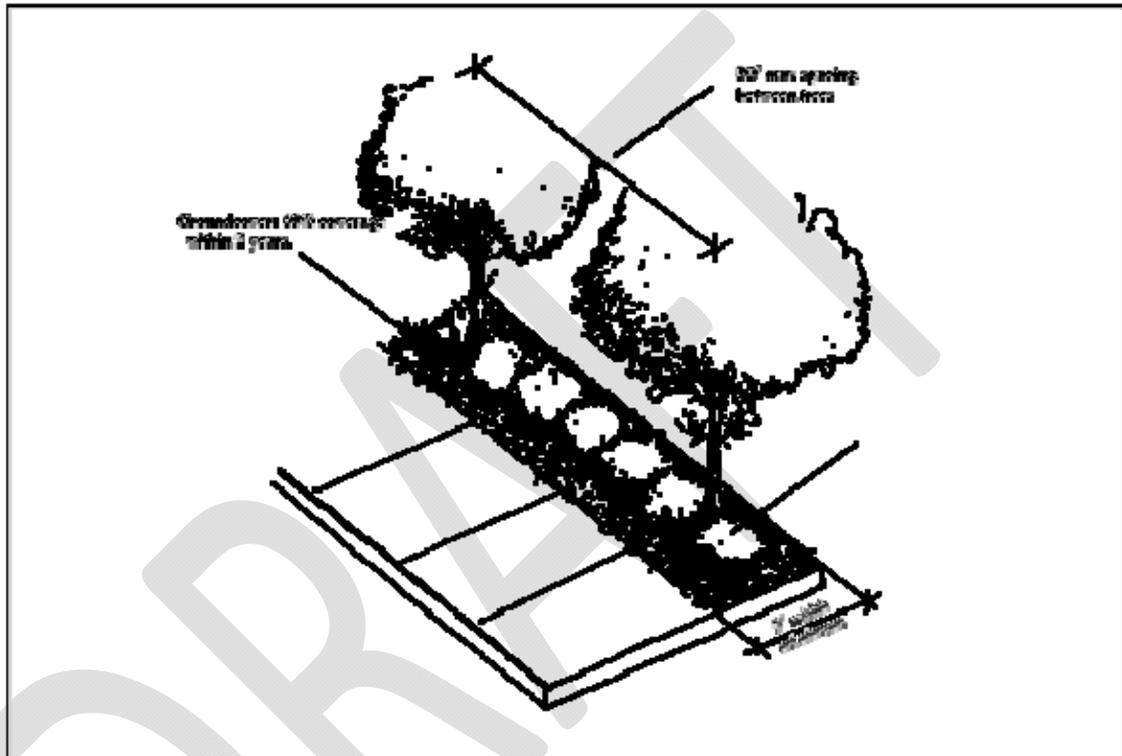
33 1. Perimeter Buffering – General. Except as specified in subsection ~~(7)(b)~~(2) of this section,
34 the applicant shall buffer all parking areas and driveways from abutting rights-of-way and
35 from adjacent property with a five-foot-wide strip along the perimeter of the parking areas
36 and driveways planted as follows (see Figure 95.40.A):

- 1 a. One row of trees, two inches in caliper and planted 30 feet on center along the entire
2 length of the strip.
- 3 b. Living groundcover planted to attain coverage of at least 60 percent of the strip area
4 within two years.
- 5 2. Exception. The requirements of ~~subsection (7)(b)(1) of~~ this section do not apply to any
6 parking area that:
- 7 a. Is fully enclosed within or under a building; or
- 8 b. Is on top of a building and is at least one story above finished grade; or
- 9 c. Serves detached dwelling units exclusively; or
- 10 d. Is within any zone that requires design regulation compliance. See below for Design
11 District requirements.
- 12 3. Design Districts. If subject to design review, each side of a parking lot that abuts a street,
13 through-block pathway or public park must be screened from that street, through-block
14 pathway or public park by using one or a combination of the following methods (see Figures
15 95.40.A, B, and C):
- 16 a. By providing a landscape strip at least five feet wide planted consistent with ~~subsection~~
17 ~~(7)(b)(1) of this section~~ KZC 95.45.1, or in combination with the following. In the RHBD
18 Regional Center a 10-foot perimeter landscape strip along NE 85th Street is required
19 planted consistent with subsection ~~(7)(b)(1)~~ of this section.
- 20 b. The hedge or wall must extend at least two feet, six inches, and not more than three
21 feet above the ground directly below it.
- 22 c. The wall may be constructed of masonry or concrete, if consistent with the provisions of
23 KZC 92.35(1)(g), in building material, color and detail, or of wood if the design and
24 materials match the building on the subject property.
- 25 d. In JBD zones:
- 26 1) If the street is a pedestrian-oriented street, the wall may also include a continuous
27 trellis or grillwork, at least five feet in height above the ground, placed on top of or
28 in front of the wall and planted with climbing vines. The trellis or grillwork may be
29 constructed of masonry, steel, cast iron and/or wood.
- 30 2) If the wall abuts a pedestrian-oriented street, the requirements of this subsection
31 may be fulfilled by providing pedestrian weather protection along at least 80 percent
32 of the frontage of the subject property.
- 33 e. If development is subject to Design Review as described in Chapter 142 KZC, the City
34 will review plant choice and specific plant location as part of the Design Review

1 approval. The City may also require or permit modification to the required plant size as
2 part of Design Review approval.

3 4. Overlapping Requirements. If buffering is required ~~under subsection (6) of this section~~ in
4 KZC 95.42, Land Use Buffering Standards, and by this subsection, the applicant shall utilize
5 the more stringent buffering requirement.

6 **Perimeter Parking Lot Landscaping**



7

8

FIGURE 95.40.A

9

Perimeter Parking – Examples of Various Screen Wall Designs

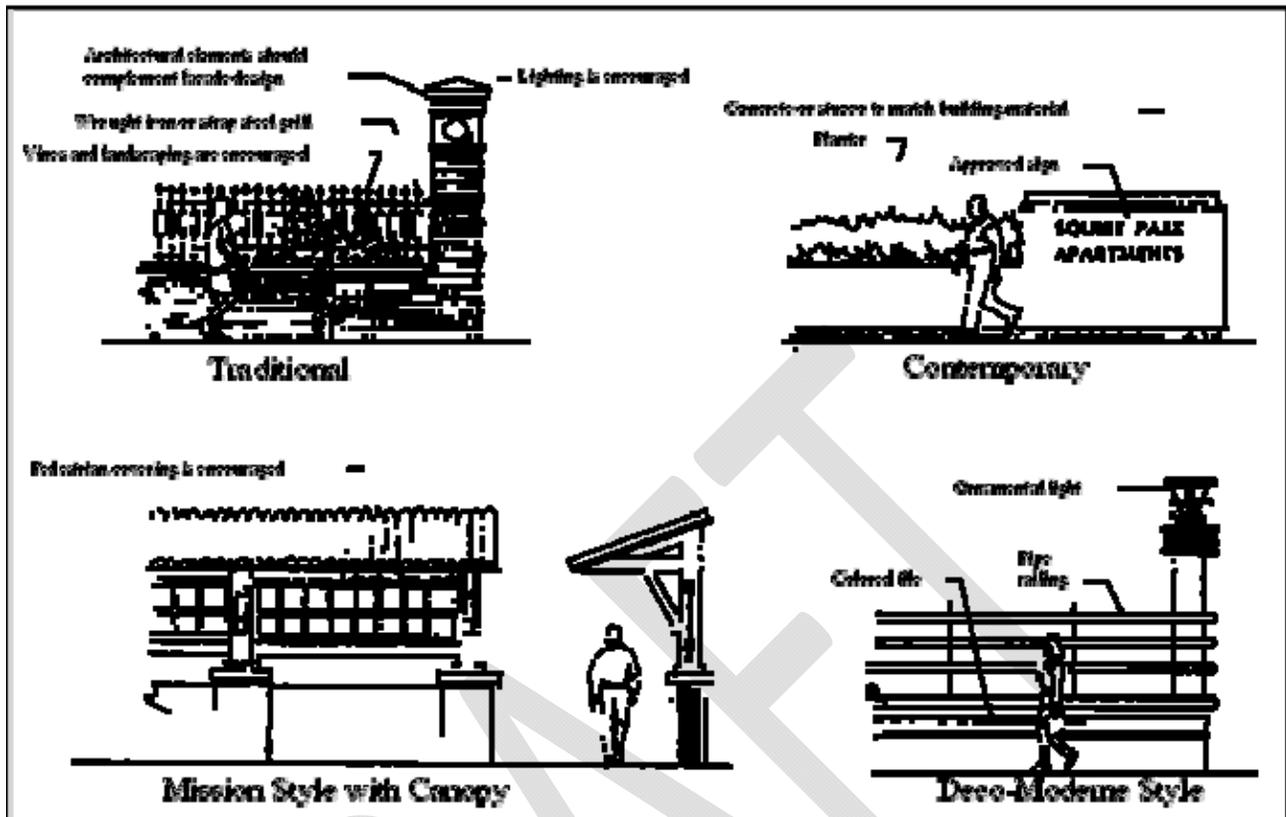


FIGURE 95.40.C

95.46e. ~~Modifications to Landscaping and Buffering Standards for Driving and Parking Areas.~~

~~j-1. Modification to Land Use Buffer Requirements.~~ The applicant may request a modification of the requirements of the buffering standards ~~of subsection (6) of this section in KZC 95.42.~~ The Planning Official may approve a modification if:

- a. The owner of the adjoining property agrees to this in writing; and
- b. The existing topography or other characteristics of the subject property or the adjoining property, or the distance of development from the neighboring property decreases or eliminates the need for buffering; or
- c. The modification will be more beneficial to the adjoining property than the required buffer by causing less impairment of view or sunlight; or
- d. The Planning Official determines that it is reasonable to anticipate that the adjoining property will be redeveloped in the foreseeable future to a use that would require no, or a less intensive, buffer; or

- 1 | e. The location of pre-existing improvements on the adjoining site eliminates the need or
2 | benefit of the required landscape buffer.

3 |
4 | 2.1) Authority to Grant and Duration Modifications to General Landscaping Requirements

5 | a. Authority to Grant and Duration. If the proposed development of the subject property
6 | requires approval through Design Review or Process I, IIA, IIB, or III, described in
7 | Chapters 142, 145, 150, 152, and 155 KZC, respectively, a request for a modification will
8 | be considered as part of that process under the provisions of this section. The City must
9 | find that the applicant meets the applicable criteria listed in subsections (2)(b) and
10 | (2)(c) ~~(7)(e)(2)~~ of this section. If granted under Design Review or Process I, IIA, IIB, or
11 | III, the modification is binding on the City for all development permits issued for that
12 | development under the building code within five years of the granting of the
13 | modification.

14 | If subsection (7)(1)(a) of this section the above does not apply, the Planning Official may
15 | grant a modification in writing under the provisions of this section.

16 | b. Internal parking lot landscaping Modifications. For a modification to the internal parking
17 | lot landscaping requirements in KZC 95.44 of subsection (7)(a) of this section, the
18 | landscape requirements may be modified if:

19 | 1) The modification will produce a landscaping design in the parking area comparable
20 | or superior to that which would result from adherence to the adopted standard; or

21 | 2) The modification will result in increased retention of significant existing vegetation;
22 | or

23 | 3) The purpose of the modification is to accommodate low impact development
24 | techniques as approved by the Planning Official.

25 | c. Perimeter parking lot and driveway landscaping. For a modification to subsection (7)(b)
26 | of this section the perimeter landscaping for parking lots and driveways, the buffering
27 | requirements for parking areas and driveways may be modified if:

28 | 1) The existing topography of or adjacent to the subject property decreases or
29 | eliminates the need for visual screening; or

30 | 2) The modification will be of more benefit to the adjoining property by causing less
31 | impairment of view or sunlight; or

32 | 3) The modification will provide a visual screen that is comparable or superior to the
33 | buffer required by subsection (7)(b) of this section KZC 95.45; or

34 | 4) The modification eliminates the portion of the buffer that would divide a shared
35 | parking area serving two or more adjacent uses, but provides the buffer around the
36 | perimeter of the shared parking area.

1 **95.478 Nonconforming Landscaping and Buffers.**

2 1. The landscaping requirements of ~~subsections (5) and (7)~~KZC 95.41 Supplemental Plantings,
3 KZC 95.43 Outdoor Use and Storage, KZC 95.44 Internal Parking Lot Landscaping, and KZC
4 95.45 Perimeter Landscape Buffering for Driving and Parking Areas of this section must be
5 brought into conformance as much as is feasible, based on available land area, in either of
6 the following situations:

- 7 a. An increase of at least 10 percent in gross floor area of any structure; or
8 b. An alteration to any structure, the cost of which exceeds 50 percent of the replacement
9 cost of the structure.

10 2. Land use buffers must be brought into conformance with ~~subsection (6) of this section~~KZC
11 95.42 in either of the following situations:

- 12 a. An increase in gross floor area of any structure (the requirement to provide conforming
13 buffers applies only where new gross floor area impacts adjoining property); or
14 b. A change in use on the subject property and the new use requires larger buffers than
15 the former use.

16 **95.45-50 Installation Standards for Required Plantings**

17 All required trees and landscaping shall be installed according to sound horticultural practices in
18 a manner designed to encourage quick establishment and healthy plant growth. All required
19 landscaping shall be installed in the ground and not in above-ground containers, except for
20 landscaping required on the top floor of a structure.

21 When an applicant proposes to locate a subterranean structure under required landscaping that
22 appears to be at grade, the applicant will: (1) provide site-specific documentation prepared by a
23 qualified expert to establish that the design will adequately support the long-term viability of
24 the required landscaping; and (2) enter into an agreement with the City, in a form acceptable
25 to the City Attorney, indemnifying the City from any damage resulting from development
26 activity on the subject property which is related to the physical condition of the property. The
27 applicant shall record this agreement with the King County Department of Elections and
28 Records.

29 ~~1. Street Trees. Street trees are not subject to the regulations of this chapter and are not~~
30 ~~counted toward any landscaping required by this chapter. Street trees are regulated by~~
31 ~~Chapter 110 KZC and Chapter 19.36 KMC.~~

32 21. Compliance. It is the applicant's responsibility to show that the proposed landscaping
33 complies with the regulations of this chapter.

34 32. Timing. All landscaping shall be installed prior to the issuance of a certificate of occupancy,
35 except that the installation of any required tree or landscaping may be deferred during the
36 summer months to the next planting season, but never for more than six months. Deferred

1 installation shall be secured with a performance bond pursuant to Chapter [175](#) KZC prior to
2 the issuance of a certificate of occupancy.

3 [43](#). Grading. Berms shall not exceed a slope of two horizontal feet to one vertical foot (2:1).

4 [5-4](#) Soil Specifications. Soils in planting areas shall have adequate porosity to allow root growth.
5 Soils which have been compacted to a density greater than one and three-tenths grams per
6 cubic centimeters shall be loosened to increase aeration to a minimum depth of 24 inches or
7 to the depth of the largest plant root ball, whichever is greater. Imported topsoils shall be
8 tilled into existing soils to prevent a distinct soil interface from forming. After soil
9 preparation is completed, motorized vehicles shall be kept off to prevent excessive
10 compaction and underground pipe damage. The organic content of soils in any landscape
11 area shall be as necessary to provide adequate nutrient and moisture-retention levels for
12 the establishment of plantings. See subsection ([89](#)) of this section for mulch requirements.

13 [65](#). Plant Selection.

14 a. Plant selection shall be consistent with the Kirkland Plant List, which is produced by the
15 City's Natural Resource Management Team and available in the Department of Planning
16 and Community Development.

17 b. Plants shall be selected and sited to produce a hardy and drought-resistant landscape
18 area. Selection shall consider soil type and depth, the amount of maintenance required,
19 spacing, exposure to sun and wind, the slope and contours of the site, and compatibility
20 with existing native vegetation preserved on the site. Preservation of existing vegetation
21 is strongly encouraged.

22 c. Prohibited Materials. Plants listed as prohibited in the Kirkland Plant List are prohibited in
23 required landscape areas. Additionally, there are other plants that may not be used if
24 identified in the Kirkland Plant List as potentially damaging to sidewalks, roads,
25 underground utilities, drainage improvements, foundations, or when not provided with
26 enough growing space.

27 d. All plants shall conform to American Association of Nurserymen (AAN) grades and
28 standards as published in the "American Standard for Nursery Stock" manual.

29 e. Plants shall meet the minimum size standards established in other sections of the KZC.

30 f. Multiple-stemmed trees may be permitted as an option to single-stemmed trees for
31 required landscaping provided that such multiple-stemmed trees are at least 10 feet in
32 height and that they are approved by the Planning Official prior to installation.

33 [76](#). Fertilization. All fertilizer applications to turf or trees and shrubs shall follow Washington
34 State University, National Arborist Association or other accepted agronomic or horticultural
35 standards.

36 [87](#). Irrigation. The intent of this standard is to ensure that plants will survive the critical
37 establishment period when they are most vulnerable due to lack of watering. All required
38 plantings must provide an irrigation system, using either Option 1, 2, or 3 or a combination

1 of those options. For each option irrigation shall be designed to conserve water by using the
2 best practical management techniques available. These techniques may include, but not be
3 limited to: drip irrigation to minimize evaporation loss, moisture sensors to prevent irrigation
4 during rainy periods, automatic controllers to insure proper duration of watering, sprinkler
5 head selection and spacing designed to minimize overspray, and separate zones for turf and
6 shrubs and for full sun exposure and shady areas to meet watering needs of different
7 sections of the landscape.

8 Exceptions, as approved by the Planning Official, to the irrigation requirement may be
9 approved xeriscape (i.e., low water usage plantings), plantings approved for low impact
10 development techniques, established indigenous plant material, or landscapes where natural
11 appearance is acceptable or desirable to the City. However, those exceptions will require
12 temporary irrigation (Option 2 and/or 3) until established.

13 a. Option 1. A permanent built-in irrigation system with an automatic controller designed
14 and certified by a licensed landscape architect as part of the landscape plan.

15 b. Option 2. An irrigation system designed and certified by a licensed landscape architect
16 as part of the landscape plan, which provides sufficient water to ensure that the plants
17 will become established. The system does not have to be permanent if the plants
18 chosen can survive adequately on their own, once established.

19 c. Option 3. Irrigation by hand. If the applicant chooses this option, an inspection will be
20 required one year after final inspection to ensure that the landscaping has become
21 established.

22 **98.** Drainage. All landscapes shall have adequate drainage, either through natural percolation or
23 through an installed drainage system. A percolation rate of one-half inch of water per hour
24 is acceptable.

25 **109.** Mulch.

26 a. Required plantings, except turf or areas of established ground cover, shall be covered
27 with two inches or more of organic mulch to minimize evaporation and runoff. Mulch
28 shall consist of materials such as yard waste, sawdust, and/or manure that are fully
29 composted.

30 b. All mulches used in planter beds shall be kept at least six inches away from the trunks of
31 shrubs and trees.

32 **110.** Protection. All required landscaped areas, particularly trees and shrubs, must be
33 protected from potential damage by adjacent uses and development, including parking and
34 storage areas. Protective devices such as bollards, wheel stops, trunk guards, root guards,
35 etc., may be required in some situations.

36 **121.** Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Plants
37 intended to mitigate for the loss of natural resource values are subject to the following
38 requirements in addition to the other landscaping requirements of found in KZC-95.4595.40
39 through KZC 95.45. Where these requirements conflict with other requirements of this

1 chapter, these requirements take precedence. Refer to Chapters [85](#) and [90](#) KZC for
2 additional requirements for these areas.

3 a. Plant Source. Plant materials must be native and selected from the Kirkland Plant List.
4 Seed source must be as local as possible, and plants must be nursery propagated unless
5 transplanted from on-site areas approved for disturbance. These requirements must be
6 included in the Mitigation Plan specifications.

7 b. Installation. Plant materials must be supported only when necessary due to extreme
8 winds at the planting site. Where support is necessary, stakes, guy wires, or other
9 measures must be removed as soon as the plant can support itself, usually after the first
10 growing season. All fertilizer applications to turf or trees and shrubs shall follow
11 Washington State University, National Arborist Association or other accepted agronomic
12 or horticultural standards.

13 c. Fertilizer Applications. Fertilizers shall be applied in such a manner as to prevent its
14 entry into waterways and wetlands and minimize its entry into storm drains. No
15 applications shall be made within 50 feet of a waterway or wetland, or a required buffer
16 as established by the City codes (such as Chapter [90](#) KZC) or Kirkland Shoreline Master
17 Program (SMP, KMC Title 24), whichever is greater, unless specifically authorized in an
18 approved mitigation plan or otherwise authorized in writing by the Planning Official.

19 **95.50-51 Tree and Landscape Maintenance Requirements**

20 The following maintenance requirements apply to all trees, including street trees, and other
21 vegetation required to be planted or preserved by the City:

22 1. Responsibility for Regular Maintenance. Required trees and vegetation, fences, walls, and
23 other landscape elements shall be considered as elements of the project in the same
24 manner as parking, building materials, and other site details. The applicant, landowner, or
25 successors in interest shall be responsible for the regular maintenance of required
26 landscaping elements. Plants that die must be replaced in kind. It is also the responsibility a
27 property owner to maintain street trees abutting their property pursuant to KZC 95.21.

28 2. Maintenance Duration. Maintenance shall be ensured in the following manner except as set
29 forth in subsections (3) and (4) of this section:

30 a. All required landscaping shall be maintained throughout the life of the development.
31 Prior to issuance of a certificate of occupancy, the proponent shall provide a final as-
32 built landscape plan and an agreement to maintain and replace all landscaping that is
33 required by the City.

34 b. Any existing tree or other existing vegetation designated for preservation ~~on a Tree Plan~~
35 ~~I - Major, a Tree Plan II, or a Tree Plan III~~ in a Tree Retention Plan shall be maintained
36 for a period of five years following issuance of the certificate of occupancy for the
37 individual lot or development. After five years, all trees on the property are subject to
38 KZC ~~95.20-95.23~~ unless:

- 1 1) The tree and associated vegetation are in a grove that is protected pursuant to
2 subsubsection (3) of this section; or
- 3 2) The tree or vegetation is considered to be a public benefit related to approval of a
4 planned unit development; or
- 5 3) The tree or vegetation was retained to partially or fully meet requirements of KZC
6 95.40 through KZC 95.45, Required Landscaping.
- 7 3. Maintenance of Preserved Grove. Any applicant who has a grove of trees identified for
8 preservation on an approved ~~tree plan~~ Tree Retention Plan pursuant to KZC
9 95.35(4)(a)(1)(b)95.30.2.a shall provide prior to occupancy the legal instrument acceptable
10 to the City to ensure preservation of the grove and associated vegetation in perpetuity,
11 except that the agreement may be extinguished if the Planning Official determines that
12 preservation is no longer appropriate.
- 13 4. Maintenance of Critical Area and Critical Area Buffers. In critical areas and their buffers,
14 native vegetation is not to be removed without City approval pursuant to KZC
15 95.35(4)(e)95.23.5.c. However, it is the responsibility of the property owner to maintain
16 critical areas and their buffers by removing non-native, invasive, and noxious plants in a
17 manner that will not harm critical areas or their buffers. See also subsection (6) of this
18 section and Chapters 85 and 90 KZC for additional requirements for trees and other
19 vegetation within critical areas and critical area buffers.
- 20 5. Non-Native Invasive and Noxious Plants. It is the responsibility of the property owner to
21 remove non-native invasive plants and noxious plants from the vicinity of any tree or other
22 vegetation that the City has required to be planted or protected. Removal must be
23 performed in a manner that will not harm the tree or other vegetation that the City has
24 required to be planted or protected.
- 25 6. Pesticides, Herbicides, and Fertilizer. The use of plant material requiring excessive pesticide
26 or herbicide applications to be kept healthy and attractive is discouraged. Pesticide,
27 herbicide, and fertilizer applications shall be made in a manner that will prevent their
28 unintended entry into waterways, wetlands, and storm drains. No application shall be made
29 within 50 feet of a waterway or wetland or a required buffer as established by City codes,
30 whichever is greater, unless done so by a state certified applicator with approval of the
31 Planning Official, and is specifically authorized in an approved mitigation plan or otherwise
32 authorized in writing by the Planning Official.
- 33 7. Landscape Plans and Utility Plans. Landscape plans and utility plans shall be coordinated. In
34 general, the placement of trees and large shrubs should adjust to the location of required
35 utility routes both above and below ground. Location of plants shall be based on the plant's
36 mature size both above and below ground. See the Kirkland Plant List for additional
37 standards.

38 **95.52 Prohibited Vegetation**

39 Plants listed as prohibited in the Kirkland Plant List shall not be planted in the City.

1 For landscaping not required under this chapter, this prohibition shall become effective on
2 February 14, 2008. The City may require removal of prohibited vegetation if installed after this
3 date. Residents and property-owners are encouraged to remove pre-existing prohibited
4 vegetation whenever practicable.

5 **95.55 Enforcement and Penalties**

6 1. Intent. These enforcement and penalty provisions have several purposes. First, they are
7 intended to discourage damage or removal of significant trees above and beyond what is
8 permitted under this chapter. Second, these enforcement and penalty provisions are
9 intended to provide complete and effective restoration of areas in which violations of this
10 chapter occur. Finally, these regulations are intended to provide a clear and efficient process
11 for addressing violations of this chapter.

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

22 2. General Requirements. Enforcement shall be conducted in accordance with procedures set
23 forth in Chapter [170](#) KZC. Special enforcement provisions related to tree conservation are
24 set forth below. To the extent there is a conflict between the provisions of this section and
25 Chapter [170](#) KZC, this section shall control.

26 [For code enforcement provisions regarding street trees and trees located on City property](#)
27 [see Kirkland Municipal Code Chapter 19.36.](#)

28 3. Authority. It shall be the duty of the Planning Official to administer the provisions of this
29 chapter. The Planning Official shall have authority to enforce and carry out the provisions of
30 this chapter.

31 4. Cease and Desist. The Planning Official may issue a notice to cease and desist using the
32 procedure set forth in KZC [170.30](#) if the Planning Official finds that a violation of this code
33 has occurred. Continued illegal tree activity following issuance of a cease and desist from
34 the City for the tree activity shall result in fines of \$1,000 per day of continued activity.

35 5. Stop Work Order. If a violation of this chapter or an approved ~~I~~tree ~~R~~etention ~~p~~lan occurs
36 on property on which work is taking place pursuant to a City of Kirkland development or
37 building permit, the Building Official may suspend some or all of the work as appropriate
38 through issuance of a stop work order. The Building Official shall remove the stop work
39 order when the City determines that the violation has been corrected or when the City has
40 reached an agreement with the violator regarding rectification of the violation. Any stop

1 work order issued under this section may be appealed using the procedures set forth in
2 Chapter 21.06 KMC.

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

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

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

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

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

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

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

19 Note: Section [95.55](#) continues on page 636.23.

20 7. Civil Penalty.

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

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

28 c. The amount of the penalty shall be assessed in accordance with Table 95.55.1. The
29 Planning Official may elect not to seek penalties if he or she determines that the
30 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

- 1 8. Tree Restoration.
- 2 a. Violators of this chapter or of a permit issued thereunder shall be responsible for
- 3 restoring unlawfully damaged areas in conformance with a plan, approved by the
- 4 Planning Official, which provides for repair of any environmental and property damage,
- 5 and restoration of the site; and which results in a site condition that, to the greatest
- 6 extent practical, equals the site condition that would have existed in the absence of the
- 7 violation(s). In cases where the violator intentionally or knowingly violated this chapter
- 8 or has committed previous violations of this chapter, restoration costs may be based on
- 9 the City-appraised tree value of the subject trees in which the violation occurred,
- 10 utilizing the industry standard trunk formula method in the current edition of Guide for
- 11 Plant Appraisal. If diameter of removed tree is unknown, determination of the diameter
- 12 size shall be made by the Planning Official by comparing size of stump and species to
- 13 similar trees in similar growing conditions. The amount of costs above the approved
- 14 restoration plan will be paid into the City forestry account.
- 15 b. Restoration Plan Standards. The restoration plan shall be in accordance to the following
- 16 standards:
- 17 1) The number of trees required to be planted is equal to the number of tree credits of
- 18 | illegally removed trees according to Table 95.3533.1.
- 19 2) The minimum size for a tree planted for restoration is 12-foot-tall conifer and three-
- 20 inch caliper deciduous or broadleaf evergreen tree. The City may approve smaller
- 21 restoration tree sizes at a higher restoration ratio, provided the site has capacity for
- 22 the additional trees and the results of restoration at a higher restoration ratio is as
- 23 good or better than at the normal ratio. The smallest allowable alternatives to the
- 24 normal restoration requirements shall be two eight-foot conifers for one 12-foot
- 25 conifer or two two-inch caliper deciduous for one three-inch caliper deciduous tree.
- 26 3) In the event the violators cannot restore the unlawfully removed or damaged trees,
- 27 the violators shall make payment to the City forestry account. Unless otherwise
- 28 determined to base the restoration costs on appraised value, the amount paid will be
- 29 the City's unit cost for a restoration tree multiplied by the number of outstanding
- 30 tree credits. The City's unit cost is based on the current market cost of purchase,
- 31 installation and three-year maintenance for a minimum-sized tree for restoration.
- 32 4) The restoration plan shall include a maintenance plan and an agreement or security
- 33 to ensure survival and maintenance of restoration trees for a three-year period
- 34 unless the violation was on a site with an approved tree plan in which case, the
- 35 maintenance period is five years.

1 9. Failure to Restore or Pay Fines.

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

7 b. Fines. A property owner or occupant who fails to restore or otherwise cure property on
8 which a violation of this chapter has occurred shall be assessed a fine of \$100.00 per
9 day for each day that restoration is incomplete. Prior to assessing fines under this
10 subsection, the City shall issue a written notice to the property owner or that restoration
11 has not been completed. The notice shall include the following information: (1) a
12 description of the nature of the violation; (2) a description of what actions are required
13 to bring the property into compliance; and (3) a date by which compliance shall be
14 required (the "compliance date"). The compliance date shall be no less than 30 days
15 from the date the notice is served on the property owner or occupant. If the property
16 owner or occupant does not, in the determination of the City, bring the property into
17 compliance by the compliance date, then the City may issue an order imposing \$100.00
18 per day fines at any time after the compliance date. The fines shall continue to accrue
19 until the violation has been certified to be corrected by the Planning Department. The
20 property owner or occupant may appeal the order imposing fines to the hearing
21 examiner using the procedures set forth in subsection 10 of this section.

22 10. Appeal to Hearing Examiner.

23 a. A person to whom a civil citation or order imposing fines is directed may appeal the civil
24 citation, including the determination that a violation exists or the amount of any
25 monetary penalty imposed, to the Hearing Examiner.

26 b. A person may appeal the civil citation or order imposing fines by filing a written notice of
27 appeal with the Department of Planning and Community Development within 14
28 calendar days of the date of service of the civil citation or order imposing fines.

29 c. Fines that accrue on a daily basis shall not be imposed while an appeal is pending unless
30 the Hearing Examiner determines that the appeal is frivolous or imposed solely for the
31 purpose of delay.

32 d. If both a civil citation and an order to cease and desist have been issued in the same
33 case, and both the civil citation and the order to cease and desist have been appealed,
34 the appeals shall be consolidated for hearing.

35 e. The office of the Hearing Examiner shall give notice of the hearing to the appellants at
36 least 17 calendar days prior to the hearing.

37 f. The Hearing Examiner shall conduct a hearing on the appeal pursuant to the rules of
38 procedure provided for in the Administrative Procedures Act (Chapter 34.05 RCW) and in
39 accordance with any rules for hearings promulgated by the Hearing Examiner. The City

1 and the appellant may participate as parties in the hearing and each may call witnesses.
2 The City shall have the burden of proof by a preponderance of the evidence that a
3 violation has occurred.

4 11. Hearing Examiner Decision.

5 a. The Hearing Examiner shall determine whether the City has proven by a preponderance
6 of the evidence that a violation has occurred and shall affirm, vacate, suspend, or
7 modify the amount of any monetary penalty imposed by the civil citation, with or
8 without written conditions.

9 b. In the event that the Hearing Examiner determines that a violation has occurred, the
10 Hearing Examiner shall also consider the following in making his or her decision: (1)
11 whether the appeal is frivolous or intended to delay compliance; (2) whether the
12 appellant exercised reasonable and timely effort to comply with applicable development
13 regulations; and (3) any other relevant factors.

14 c. The Hearing Examiner shall mail a copy of his or her decision to the appellant, by
15 certified mail, postage prepaid, return receipt requested.

16 d. The decision of the Hearing Examiner may be reviewed in King County Superior Court
17 using the standards set forth in RCW 36.70C.130. The land use petition must be filed
18 within 21 calendar days of the issuance of the final land use decision by the Hearing
19 Examiner (see Chapter 36.70C RCW for more information).

20 **95.30-57 City Forestry Account**

21 1. Funding Sources. All civil penalties received under this chapter and all money received
22 pursuant to KZC 95.35 shall be used for the purposes set forth in this section. In addition,
23 the following sources may be used for the purposes set forth in this section:

24 a. Agreed upon restoration payments imposed under KZC 95.55 or settlements in lieu of
25 penalties;

26 b. Sale of trees or wood from City property where the proceeds from such sale have
27 not been dedicated to another purpose;

28 c. Donations and grants for tree purposes;

29 d. Sale of seedlings by the City; and

30 e. Other monies allocated by the City Council.

31 2. Funding Purposes. The City shall use money received pursuant to this section for the
32 following purposes:

33 a. Acquiring, maintaining, and preserving wooded areas within the City;

34 b. Planting and maintaining trees within the City;

- 1 ~~c. Identification and maintenance of landmark trees;~~
- 2 ~~dc.~~ Establishment of a holding public tree nursery;
- 3 ~~ed.~~ Urban forestry education;
- 4 ~~e.~~ Implementation of a tree canopy monitoring program; or
- 5 f. Other purposes relating to trees as determined by the City Council.

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