



CITY OF KIRKLAND

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
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MEMORANDUM

DATE: January 3, 2012

To: Planning Commission and Houghton Community Council

FROM: Joan Lieberman-Brill, AICP, Senior Planner
Paul Stewart, AICP, Deputy Director
Eric Shields, AICP, Director

SUBJECT: 2012 MISCELLANEOUS ZONING/MUNICIPAL CODE
AMENDMENTS STUDY SESSION (ZON12-00002)

RECOMMENDATION

Conduct a study session on the proposed Part 1 Kirkland Zoning Code (KZC) and Municipal Code (KMC) amendments (“No Policy” and “Minor Policy” changes) and provide feedback to staff on the draft list of amendments and work program schedule (Attachment 1). In addition, determine if the Planning Commission and Houghton would consider a joint study session on April 23 or April 26.

BACKGROUND DISCUSSION

Planning staff periodically forwards miscellaneous KZC/KMC amendments to the Planning Commission (PC) and Houghton Community Council (HCC) for consideration. The amendments are selected from an on-going list of issues, code interpretations, requests from the public, requests from City Council, and needs identified by staff.

Zoning Code amendments are reviewed through either Process IV (KZC Chapter 160) or Process IVA (KZC Chapter 161). KMC Title 22 Subdivisions amendments require PC public hearing and are included in this process. Process IVA is an abbreviated process intended for amendments that promote clarity, eliminate redundancy, or correct inconsistencies. Because many of the amendments in this bundle are more substantive, all of the proposed amendments will be reviewed using Process IV.

Many of the proposed amendments are within the disapproval jurisdiction of the HCC. HCC will review the roster and work program on Jan 23. Topics with an asterisk (*) denote items that are within Houghton's jurisdiction.

The first study sessions on January 12th (PC) and January 23 (HCC) consist of proposed amendments that are considered "no policy" or "minor policy" issues.

The next study sessions for these amendments are scheduled for Feb 9 (PC), and Feb 27 (HCC) to review the "*moderate*" zoning code amendments (Part II), and follow up on any of the "no policy" and "minor policy" amendments that need further review at the next study session.

A joint study session is tentatively scheduled for April 23 and/or 26 to go over the moderate policy amendment drafts and address any remaining changes to the rest of them. The PC and HCC should determine if they want to have a joint study session. A joint public hearing is tentatively set for May 24 (PC and HCC).

AMENDMENTS GENERAL

The PC and HCC should discuss and provide feedback regarding the following proposed "no policy" and "minor policy" amendments at their respective study sessions (Jan 12 PC /Jan 23 HCC). Staff will be available to answer questions. Based on the PC and HCC direction, staff will bring back draft amendments at a follow up meeting before each group.

The sections below provide a breakdown of the proposed KZC/KMC amendments, by their policy level implications: "*No Policy*" and "*Minor Policy*" changes. (The Moderate Policy changes will be addressed in a separate memo for your February 9 PC and February 27 HCC meetings.)

NO POLICY CHANGES

The following two items represent proposed code amendments which result in no changes to current policy. The purpose of these amendments is to clarify and fix inconsistencies within the code. Changes have been drafted for these. Staff requests that the PC and HCC provide feedback to staff if additional information and/or changes are needed.

- **Code Enforcement KMC Title 1 Section 1.12.050.(d).(6)**

Purpose: Correct the reference regarding who gets the Hearing Examiner notice of decision after the required public hearing addressing a civil violation.

This section mistakenly requires the decision to be mailed to the same entity twice; the appellant and department director in the City of Kirkland issuing the civil violation (e.g. Planning Director, Public Works Director, etc). Since the City is the appellant who brings the complaint forward for review, and the Hearing Examiner is already required to mail the decision to the city department director, the amendment would instead require that the person charged with the violation also receives the decision, which is the intent.

Staff Recommendation: Staff recommends that in section 1.12.050.d.6, the word "appellant" is changed to "person charged with the violation" (Attachment 2).

- ***Trees and Landscaping KZC Chapter 95 Section 95.23.5.e.1**

Purpose: Correct the reference in subsection 5.e, which refers to the Tree Removal Allowances not associated with development activity, when seeking to cut trees on private property.

As it now reads, it implies that these sites require a Forest Management Plan developed by a qualified professional, regardless of how many trees are proposed for removal. The intent is to require a plan for only those requests seeking to remove more than two trees in any 12 month period, the threshold used for all tree removal in Kirkland.

Staff Recommendation: Staff recommends that in section 95.23.5.e.1, the words "tree removal is requested" be changed to "removal of more than two trees is requested..." (Attachment 3)

- ***Process I Chapter 145 Section 145.22.2.a.**

Purpose: This amendment clarifies that state and federal agencies with jurisdiction must receive a Notice of Application for Process I development proposals.

For example, WAC 173-27-110 requires notification to be given to the Department of Ecology and SEPA agencies with jurisdiction for all shoreline permits. Processes IIA and IIB (KZC Chapters 150 and 152) have already incorporated this language for shoreline conditional use and shoreline variances, respectively, as a follow-up to the SMP update. The same language would be added to Process I.

Staff Recommendation: Add the following language which is the same as is now in Processes IIA and IIB for distribution of the Notice of Application to Process I, Section 145.22.2.a: "The notice will be distributed to each local, state and federal agency that the City knows has jurisdiction over the proposed development activity." (Attachment 4)

MINOR POLICY CHANGES

The proposed amendments do not clarify existing regulations, but instead change them. However, they are generally not considered significant policy issues.

- **Totem Lake 10E KZC Chapter 55 Section 55.93.110**

Purpose: Correct the sign category for "Vehicle or Boat Repair, Services, Washing or Rental".

Staff Recommendation: Replace the current sign category A, (which is used for housing developments and single family homes), with category E, for non residential uses. Sign category E allows wall-mounted, marquee, pedestal, or monument signs.

- ***Waterfront Districts (WD) I, II and III KZC Chapter 30 Sections 30.10,20 and 30.**

Purpose: This amendment would add a new general regulation to all three Waterfront District zones to address required rear yard setbacks. There are situations when an upland lot that is within a WD zone does not abut the shoreline, and therefore may have a rear yard rather than a shoreline setback yard. However, no rear yard setback is specified in the use zone charts for WD I and III. A special regulation addresses rear yard setbacks in WD II, but only for detached dwelling units.

To remedy this, a new general regulation is proposed which would require the same rear yard dimension for the use as is used in the comparable zoning classification. A general regulation rather than a special regulation

is proposed, since it would apply to all but the water dependent uses allowed in the WD zones.

In the WD II zone, located in the Market Neighborhood, the new general regulation would replace a special regulation that pertains only to detached dwelling units. The new proposed general regulation would pertain to Public Utility, Government Facility, Community Facility and Public Parks as well as detached dwelling units. For example, since WD II is a low density residential zone, the comparable RS ten-foot rear yard dimension would be used. For public utilities a 20 foot rear yard setback would be used.

In the medium density residential WD I and III zones, from approximately Marina Park south, the RM rear yard setback would be used. For example, in the multifamily WD I and III zones, Detached Dwelling Units, and Detached, Attached or Stacked Dwelling Units would have a 10 foot rear yard setback, as they do in the comparable RM zones. Similarly, assisted living facilities would have a 10 foot rear yard setback, as they do in RM zones.

Staff Recommendation: Staff recommends drafting a general regulation for each of the WD zones to address situations when there are rear yard setbacks for properties that do not abut the shoreline.

- ***Floor Area Ratio Exemptions Chapter 115 Section 115.42.**

Purpose: This amendment would clarify whether stair wells should be exempt from FAR calculations, and if so, to what extent. Like foyers and attics, they are technically interior volume, which FAR measures. However, since the Code currently exempts a portion of these and other vaulted areas from FAR calculations, planners have been treating stair wells similarly. This amendment would seek to specify all exemptions to FAR calculations.

Staff will bring back several options to consider. One is to eliminate any exemption from FAR. Another is to exempt either all or a portion of a stair well from the calculation of FAR.

The discussion would also address simplifying the process of calculating FAR, if exemptions are to be retained. An idea is to change FAR in all zones to include the average area of exempted vaulted areas (e.g. stairwells, foyers and attic area), rather than exempt them. Simplifying this regulation would eliminate time now spent calculating the interior

vaulted areas during permit review. Instead, just the perimeter of the structure could be measured, and the plans could be adjusted if necessary to meet the FAR.

Staff Recommendation: Explore these options and staff will bring back a recommendation at the second study session.

- ***Required Yards related to a 2nd Story above Garage Rear Yard Setback Encroachment - KZC Chapter 115 Section 115.115.3.o**

Purpose: This code amendment would clarify whether or not a second story above a detached garage, which utilizes an alley for primary vehicular access, may encroach into the rear yard setback. The Code is silent on this, but the past practice has been to allow the second story in the setback. The purpose of allowing garages to encroach into the required 10 foot rear yard alley setback is to incentivize taking access off of alleys. That intent is further reinforced by explicitly limiting detached garages to one story when located 5 feet from an unopened alley. Conversely, height is not addressed, let alone limited; when the alley is open, to encourage the preferred alley access.

Staff will bring back examples of existing two story garages with access off of an alley to consider impacts. ADU's and offices are probably typical uses in the second story space.

Staff recommendation: Codify current practice, which is to allow the detached garage to include a second story in the required rear yard.

- ***Front Yard Setback Flexibility in Low Density Residential Zones KZC Chapters 15, 17 and 18**

Purpose: This code amendment would give some setback relief when a parcel has two opposite front yard setbacks. There are a limited number of parcels with this configuration. As the Code now reads they are required to provide two 20 foot front yard setbacks. It could be argued that this is an onerous requirement. King County would require two 10 foot setbacks in this situation.

An amendment could either parallel the corner rule in RS/RSX zones that allows corner properties to choose which will be the front, and allows the other to reduced, or the amendment could prescribe the front façade as the 20 foot front yard setback, and the opposite a 10 foot rear yard setback.

Staff Recommendation: Staff recommends that the front façade be designated the 20 foot front yard and the opposite be regulated as a rear yard.

MODERATE POLICY CHANGES

These are considered more substantive changes to existing regulations. Staff will be presenting the draft roster for these on February 9 (PC) and February 27 (HCC).

Attachments

1. Work Program
2. KMC Code Enforcement amendments
3. KZC Tree Removal amendments
4. KZC Process I Notice of Application amendments

Cc: File ZON12-00002

**Work Program Miscellaneous Zoning Code Amendments
(ZON12-00002)
January 2012**

- Jan 12* **PC study** review roster of potential ZC amendments and schedule, and provides direction
- Jan 23* **HCC study** review roster of potential ZC amendments and schedule, and provides direction
- Feb 9* **PC study** review roster of moderate policy amendments and first draft of no policy and minor policy amendments and provide direction
- Feb 27* **HCC study** review roster of moderate policy amendments and first draft of amendments and provide direction.
- April 23/26* **PC /HCC joint study** draft amendments (tentative)
- May 24* **PC/HCC joint public hearing** proposed amendments and recommendation
- June 19* **CC adoption** of ordinance
- July 23* **HCC final action** on ordinance

1.12.050 Hearing before the hearing examiner.

(a) Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the hearing examiner not less than ten calendar days after the notice of civil violation is issued.

(b) Prior Correction of Violation or Payment of Monetary Penalty. Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed required corrective action at least forty-eight hours prior to the scheduled hearing.

(c) Procedure. The hearing examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the hearing examiner. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The city shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.

(d) Decision of the Hearing Examiner.

(1) The hearing examiner shall determine whether the city has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the city's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

(2) The hearing examiner shall issue an order to the person responsible for the violation which contains the following information:

(A) The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

(B) The required corrective action;

(C) The date and time by which the correction must be completed;

(D) The monetary penalties assessed based on the criteria in subsection (d)(3) of this section;

(E) The date and time after which the city may proceed with abatement of the unlawful condition if the required correction is not completed.

(3) Assessment of Monetary Penalty. Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in Section [1.12.040](#). The hearing examiner shall have the following options in assessing monetary penalties:

(A) Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or

(B) Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the hearing examiner and thereafter; or

(C) Assess no monetary penalties.

(4) Determining Monetary Penalty. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:

- (A) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;
 - (B) Whether the person failed to appear at the hearing;
 - (C) Whether the violation was a repeat violation;
 - (D) Whether the person showed due diligence and/or substantial progress in correcting the violation;
 - (E) Whether a genuine code interpretation issue exists; and
 - (F) Any other relevant factors.
- (5) Effect of Repeat Violations. The hearing examiner shall assess a monetary penalty for each repeat violation as set forth in Section [1.12.040](#).
- (6) Notice of Decision. The hearing examiner shall mail a copy of the decision to the [appellant person charged with the violation](#) and to the applicable department director within ten working days of the hearing.
- (e) Failure to Appear. If the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the examiner will enter an order finding that the violation appeared and assessing the appropriate monetary penalty. The city will carry out the hearing examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.
- (f) Appeal to Superior Court. An appeal of the decision of the hearing examiner must be filed with superior court within twenty-one calendar days from the date the hearing examiner's decision was mailed to the person to whom the notice of civil violation was directed, or is thereafter barred. (Ord. 4280 § 1 (part), 2011)

95.23 Tree Removal – Not Associated with Development Activity

1. Introduction. *(No Change)*
2. Permit Required for Removal of Trees on Private Property or City Right-of-Way. *(No Change)*
3. Tree Removal Permit Application Form. *(No Change)*
4. Tree Removal Permit Application Procedure and Appeals. *(No Change)*
5. Tree Removal Allowances.
 - a.-d. *(No Change)*
 - e. Forest Management Plan.
 - 1) A Forest Management Plan must be submitted for developed, significantly wooded sites (over 40 percent canopy coverage) of at least 35,000 square feet in size in which ~~tree removal~~ removal of more than two trees is requested and is not exempt under KZC 95.20. A Forest Management Plan must be developed by a qualified professional and shall include the following:
 - a) A site plan depicting the location of all significant trees (a survey identifying tree locations is not required) with a numbering system of the trees (with corresponding tags on trees in the field). The site plan shall include size (DBH), species, and condition of each tree;
 - b) Identification of trees to be removed, including reasons for their removal and a description of low impact removal techniques pursuant to subsection (5)(e)(2) of this section;
 - c) A reforestation plan that includes location, size, species, and timing of installation;
 - 2) The following Forest Management Plan standards shall apply:
 - a) Trees to remain should be dominant or co-dominant in the stand, healthy and windfirm.
 - b) No removal of trees from critical areas and their buffers, unless otherwise permitted by this chapter.
 - c) No removal of specimen trees, unless otherwise permitted by this chapter.
 - d) No removal of healthy trees that would cause trees on adjacent properties to become hazardous.
 - e) The reforestation plan ensures perpetuity of the wooded areas. The size of planted trees for reforestation shall be a minimum of three (3) feet tall.
 - f) Logging operations shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time. To control erosion, native shrubs, ground cover and stumps shall be retained where feasible. Where not feasible, appropriate erosion control measures to be approved by the City shall be implemented.

- g) Removal of tree debris shall be done pursuant to Kirkland Fire Department standards.
- h) Recommended maintenance prescription for retained trees with a specific timeline for such management.

145.22 Notice of Application and Comment Period

1. Contents – *(No Change)*
2. Distribution
 - a. Not more than 10 calendar days after the Planning Official determines that the application is complete, and at least 18 calendar days prior to the end of the comment period, the Planning Official shall distribute this notice as follows:
 - 1) The notice, or a summary thereof, will be published in the official newspaper of the City. The published notice does not require a vicinity map.
 - 2) The notice, or a summary thereof, including a vicinity map, will be posted on each of the official notification boards of the City.
 - 3) The notice, or a summary thereof, including a vicinity map, will be distributed to the residents of each piece of property adjacent to or directly across the street from the subject property.
 - 4) The notice will be distributed to each local, state and federal agency that the City knows has jurisdiction over the proposed development activity.
 - 4)5) The notice will be posted on the City's website.
 - b. Not more than 10 calendar days after the Planning Official determines that the application is complete, and at least 18 calendar days prior to the end of the comment period, the applicant shall provide for and erect public notice signs as follows:
 - 1) The signs shall be designed and constructed to City standards. A copy of the notice described in subsection (1) of this section and a site plan and/or vicinity map shall be attached to each sign.
 - 2) The Department of Planning and Community Development is authorized to develop the standards for the public notice signs necessary for implementation of this section.
 - 3) One (1) sign shall be erected on or near the subject property facing each public right-of-way adjacent to the subject property and private easement or tract road providing primary vehicular access to the subject property and to any property that abuts the subject property. The Department of Planning and Community Development shall approve the location of each sign.
 - 4) The signs may not be removed until 21 calendar days after the final decision of the City on the application, and the applicant shall remove the signs within seven (7) calendar days thereafter.