



CITY OF KIRKLAND
Planning and Community Development Department
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MEMORANDUM

To: Houghton Community Council

From: Jon Regala, Senior Planner
Deborah Powers, Urban Forester
Nancy Cox, AICP, Development Review Manager
Paul Stewart, AICP, Deputy Planning Director

Date: January 25, 2010

Subject: FINAL ACTION ON TREE REGULATION AMENDMENTS. FILE ZON08-00016

RECOMMENDATION

The Community Council has three options for final action on the tree regulation amendments. They are:

1. Approve the enclosed Houghton Resolution No. 2010-2 that adopts Ordinance 4226 as approved by the City Council on December 15, 2009. Approval of the resolution would make the ordinance effective within the Houghton jurisdiction;
2. Disapprove the amendments by a majority of the Community Council approving a resolution to disapprove; or
3. Fail to disapprove the ordinance within 60 days after City Council approval. This would have the effect of approving the amendments.

No action is needed by the Houghton Community Council on Ordinances 4227 and 4228 since they are related to changes in the Kirkland Municipal Code and have been provided as background information.

CITY COUNCIL ACTION

The City Council considered the Planning Commission's and HCC's recommendations at their December 1, 2009 and December 15, 2009 meetings. At the December 15th meeting, the City Council adopted the following ordinances as amended (See Exhibits 1, 2, and 3):

O-4226: Amending KZC Chapter 95 – Tree and Landscaping regulations and related KZC sections

O-4227: Amending KMC 19.36 – Street Trees

O-4228: New fees for existing tree related permits

BACKGROUND DISCUSSION

On October 26, 2009 the Houghton Community Council (HCC) forwarded their recommendation of approval on the proposed amendments related to the tree amendment project. The HCC's recommendation differed from the Planning Commission's final recommendation to the City Council on two topics: 1) the requirement for a permit to remove up to two trees per year and 2) the tree removal and replacement threshold.

The results of the City Council's actions regarding these topics are discussed below.

Tree removal permit

At their public hearing, the Houghton Community Council did not agree with staff's recommendation to require a permit to remove up to two trees per year. The Houghton Community Council cited the following reasons for their recommendation:

- Tracking tree removal is not an effective way to measure tree canopy
- The City should conduct a periodic tree canopy analysis to measure tree canopy
- Citizens do not want additional bureaucracy and additional fees
- The tree removal request system in place is working

The Planning Commission's recommendation was not entirely consistent with the Houghton Community Council's recommendation. The Planning Commission agreed with staff that requiring a permit for removing up to two trees per year should be implemented since data from the permits will help supplement a future tree canopy analysis and can provide notice of tree removal to concerned parties via *Kirklandpermits.net*. But to address the HCC's concerns, the Planning Commission recommended deferring requiring a tree removal permit until such time that an online permit application system is developed by the City without an application fee to the applicant. The intent of the Planning Commission was to make applying for a tree removal permit as easy as possible for applicants. In the meantime, the Planning Commission was in agreement to maintain the current voluntary system for submitting a tree removal permit (tree removal request form).

On December 15, 2009, the City Council adopted the Planning Commission's recommendation to require a tree removal permit at such time an online tree removal permit system is created at no charge to the applicant. Language was incorporated into the ordinance directing staff to process a code amendment once an online permit system is available at no charge to an applicant (O-4226 Section 2). Similar language was also included in KZC Section 95.23(5)(a).

Is the Houghton Community Council agreeable to this approach?

Tree Removal & Replacement

The Planning Commission expressed a concern that the existing tree retention/replacement requirement requiring two trees to remain on a parcel is too low of a standard. The Planning Commission asked staff to explore options to increase the minimum number of trees as the property size increases. Below were the three options prepared by staff:

Option 1 - Set Minimum Tree Retention Based on Tree Density

The City requires a minimum tree density of 30 tree credits per acre for development applications related to single-family and short subdivision or subdivision applications. The tree density requirements currently do not apply to tree removal not associated with development. With this option, the tree density calculation would apply to tree removal not associated with development. This approach will make the tree density requirement consistent between single-family properties regardless if development is proposed or not.

Option 2 - Set Minimum Tree Retention Based on Lot Size

This option is based on the existing regulation of having two trees remain on the subject property. However, larger lots would require a higher number of trees to remain on the property. Since the lowest single-family zoning designation pertains to 5,000 square foot lots, the code could be revised to maintain a minimum of two trees for every 5,000 square feet of lot area (or 1 per 2,500 square feet). Therefore a 10,000 square foot lot will need four significant trees while a 30,000 square foot lot will need 12 significant trees for minimum tree retention.

Option 3 – No Change

A third option is to keep the code as is until additional information is obtained.

The Houghton Community Council, at its public hearing, voiced support for Option 3 agreeing with staff that additional data is needed prior to making any changes to this requirement. The Planning Commission, however, strongly recommended that Option 2 should be codified now rather than later to further slow tree canopy loss and increase the succession of trees by requiring replacement trees earlier.

At the December 15, 2009 meeting, the City Council, while interested in Option 2, determined that additional data was needed on this topic prior to making a code change. Therefore Option 3 – *No Change* was adopted in Ordinance 4226. This action was consistent with the HCC's recommendation.

ADDITIONAL CHANGES

A concern expressed by the City Council at their December 1, 2009 meeting was that the exemption for Utility Maintenance (KZC 95.20(2)) allows tree removal without first considering pruning. Staff agreed that street tree pruning should be the first option in utility maintenance. If street tree pruning does not solve the problem, tree removal may be used as a last resort. Below is the revised language which reflects this approach. Changes were also made to subsection (1) below to clarify that the exemption for emergency tree removal applies to trees on private and public property. The following changes were adopted by the City Council in Ordinance 4226.

KZC 95.20 Exemptions. The following activities are exempt from the provisions of this chapter:

1. *Emergency Tree Removal. Any tree ~~on private property~~ that poses an imminent threat to life or property may be removed ~~without first obtaining a tree removal permit~~. The City must be notified within seven days of the emergency tree removal with evidence of the threat for removing the tree to be considered exempt from this chapter. If the Planning Official determines that the emergency tree removal was not warranted or if the removed tree was required by a development permit, the Planning Official may require that the party obtain a permit and/or require that replacement trees and vegetation be replanted as mitigation.*

2. *Utility Maintenance. Trees may be removed by the City or utility provider in situations involving ~~immediate danger to life or property, or interruption of services provided by a utility~~ only if pruning cannot solve utility service problems. Utility maintenance shall conform to a City approved Utility Vegetation Management Plan.*

Is the Houghton Community Council agreeable to these changes?

FEES

Also adopted at the December 15, 2009 Council Meeting was an ordinance that requires fees for a limited number of tree permits that are currently being processed (O-4228). Fees for certain tree permits *not associated with development* are warranted due to the staff time to review arborist reports and conduct site visits associated with these requests. This information was presented to the Planning Commission and Houghton Community Council. Neither group recommended changes. No action is required by the HCC at this time since these changes were made to the KMC.

EXHIBITS

1. Ordinance 4226
2. Ordinance 4227
3. Ordinance 4228
4. Houghton Resolution 2010-2

ORDINANCE NO. 4226

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING AND LAND USE, AMENDING CITY REGULATIONS RELATING TO TREES, AMENDING ORDINANCE 3719 AS AMENDED, THE KIRKLAND ZONING ORDINANCE AND APPROVING A SUMMARY ORDINANCE FOR PUBLICATION, FILE NO. ZON08-00016.

WHEREAS, the City Council has received a recommendations from the Kirkland Planning Commission and the Houghton Community Council to amend certain sections of the text of the Kirkland Zoning Code, Ordinance 3719 as amended, all as set forth in that certain reports and recommendations of the Planning Commission and the Houghton Community Council dated December 1, 2009 and bearing Kirkland Department of Planning and Community Development File No. ZON08-00016; and

WHEREAS, prior to making said recommendation, the Kirkland Planning Commission, following notice thereof as required by RCW 35A.63.070, on November 5, 2009, held a public hearing, on the amendment proposals and considered the comments received at said hearing; and

WHEREAS, prior to making said recommendation, the Houghton Community Council, following notice thereof as required by RCW 35A.63.070, on October 26, 2009, held a courtesy hearing, on the amendment proposals and considered the comments received at said hearing; and

WHEREAS, pursuant to the State Environmental Policy Act (SEPA), there has accompanied the legislative proposal and recommendation through the entire consideration process, a SEPA Addendum to Existing Environmental Documents issued by the responsible official pursuant to WAC 197-11-625; and

WHEREAS, in regular public meeting the City Council considered the environmental documents received from the responsible official, together with the reports and recommendations of the Planning Commission and Houghton Community Council; and.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Kirkland as follows:

Section 1. Zoning text amended: The following specified sections of the text of Ordinance 3719 as amended, the Kirkland Zoning Ordinance, be and they hereby are amended to read as follows:

As set forth in Attachments A and B attached to this ordinance and incorporated by reference.

Section 2. The City Council desires to require a tree removal permit in the future for the removal of trees that are currently exempt under Kirkland Zoning Code Section 95.20.1.a. This permit requirement should be adopted at such time as the City is able to make an online permit application available with no associated permit fee to the applicant. The City Council directs staff to process a proposed Zoning Code amendment to this effect at such time as the City is able to accept online permit applications for tree removal requests.

Section 3. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

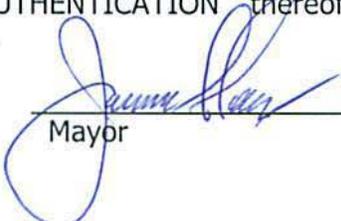
Section 4. To the extent the subject matter of this ordinance, pursuant to Ordinance 2001, is subject to the disapproval jurisdiction of the Houghton Community Council, this ordinance shall become effective within the Houghton Community Municipal Corporation only upon approval of the Houghton Community Council or the failure of said Community Council to disapprove this ordinance within 60 days of the date of the passage of this ordinance.

Section 5. Except as provided in Section 4, this ordinance shall be in full force and effect on April 1, 2010. Pursuant to Section 1.08.017 Kirkland Municipal Code, publication of this ordinance shall be in the summary form attached to the original of this ordinance and by this reference approved by the City Council, as required by law.

Section 6. A complete copy of this ordinance shall be certified by the City Clerk, who shall then forward the certified copy to the King County Department of Assessments.

PASSED by majority vote of the Kirkland City Council in open meeting this 15th day of December, 2009.

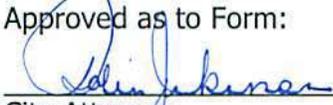
SIGNED IN AUTHENTICATION thereof this 15th day of December, 2009.



Mayor

Attest:


City Clerk

Approved as to Form:


City Attorney

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KIRKLAND ZONING CODE CHAPTER 95 – TREE MANAGEMENT AND REQUIRED LANDSCAPING

95.05 Purpose and Intent

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

- a. Minimizing the adverse impacts of land disturbing activities and impervious surfaces such as runoff, soil erosion, land instability, sedimentation and pollution of waterways, thus, reducing the public and private costs for storm water control/treatment and utility maintenance;
- b. Improving the air quality by absorbing air pollutants, mitigating the urban heat island effect, assimilating carbon dioxide and generating oxygen, and decreasing the impacts of climate change;
- c. Reducing the effects of excessive noise pollution;
- d. Providing cost-effective protection from severe weather conditions with cooling effects in the summer months and insulating effects in winter;
- e. Providing visual relief and screening buffers;
- f. Providing recreational benefits;
- g. Providing habitat, cover, food supply and corridors for a diversity of fish and wildlife; and
- h. Providing economic benefit by enhancing local property values and contributing to the region’s natural beauty, aesthetic character, and livability of the community.

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

The intent of this chapter is to:

- a. Maintain and enhance canopy coverage provided by trees for their functions as identified in KZC 95.05(1);

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

19 **95.10 Definitions**

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

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

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

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

31 4. Diameter at Breast Height (DBH) – The diameter or thickness of a tree trunk measured at
32 4.5 feet from the ground. DBH is also known as Diameter at Standard Height (DSH).

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

- 1 6. Grove – A group of three or more significant trees with overlapping or touching crowns.
- 2 7. Hazard Tree - A ~~hazard~~ tree that must meet all the following criteria:
- 3 a. a tree with a combination of structural defects and/or disease which makes it subject to
4 a high probability of failure;
- 5 b. and is in proximity to moderate- to high frequency targets (of persons or property that
6 can be damaged by tree failure); and
- 7 c. –The hazard condition of the tree cannot be lessened with reasonable and proper
8 arboricultural practices nor can the target be removed.
- 9 8. Impact – A condition or activity that affects a part of a tree including the trunk, branches,
10 and critical root zone.
- 11 ~~Landmark Tree – A tree or group of trees designated as such because of its exceptional value to~~
12 ~~the residents of the City.~~
- 13 9. Limit of Disturbance – The boundary between the ~~area of minimum protection~~ protected
14 area around a tree and the allowable site disturbance as determined by a qualified
15 professional measured in feet from the trunk.
- 16 10. Nuisance Tree - A ~~nuisance~~ tree that must meet either of the following criteria:
- 17 1a. Tree is causing obvious, physical damage to private or public structures, including but
18 not limited to: sidewalk, curb, road, driveway, parking lot, building foundation, or roof;
19 or
- 20 2b. Tree has been sustained damaged by from past maintenance practices, ~~that cannot~~
21 ~~be corrected with proper arboricultural practices~~
- 22 ~~;~~ or 3. The problems associated with the tree must be such that they cannot be corrected
23 by ~~any other~~ reasonable practices. It including but not limited to ~~the following~~:
- 24 ~~a) Pruning of the crown or roots of the tree, and/or small modifications to the site~~
25 ~~including but not limited to a driveway, parking lot, patio or sidewalk to alleviate the~~
26 ~~problem.~~
- 27 ~~b) Pruning, bracing, and/or cabling to reconstruct a healthy crown.~~
- 28 11. Public Works Official – Designee of the Public Works Director
- 29 12. Qualified Professional – An individual with relevant education and training in arboriculture or
30 urban forestry, having two or more of the following credentials:
- 31
 - International Society of Arboriculture (ISA) Certified Arborist;

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

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

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

- 13 a. ~~Type 1 High~~, a viable tree, located within required yards and/or required landscape
14 areas. ~~Tree retention efforts shall be directed to the following trees if they are~~
15 ~~determined to be healthy and windfirm by a qualified professional, and provided the~~
16 ~~trees can be safely retained when pursuing alternatives to development standards in~~
17 ~~subsections (4)(a)(2) and (4)(a)(3) of this section pursuant to KZC 95.32:~~

18 ~~1) Landmark trees;~~

19 ~~2) Specimen trees;~~

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

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

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

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

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

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

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

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

4 | 17. Specimen Tree – A viable tree that is considered in very good to excellent health and free of
5 | major defects, as determined by the City’s Urban Forester.

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

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

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

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

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

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

22 | **95.20 Exemptions**

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

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

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

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

<insert> or if the removed tree was required by a development permit

<insert> only if pruning cannot solve utility service problems. Utility maintenance shall conform to a City approved Utility Vegetation Management Plan.

1 ~~19.36.030 Alteration of street trees without prior approval is prohibited.~~

2 **95.21 Tree Pruning**

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

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

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

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

32 **95.23 Tree Removal – Not Associated with Development Activity**

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

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

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

7 No person, directly or indirectly, shall remove any significant tree on any property within the
8 City, or any tree in the public right-of-way except City right-of-way, without first obtaining a
9 tree removal permit as provided in this chapter, unless the activity is exempted in KZC 95.20
10 and KZC 95.23(5). ~~Trees in City right-of-way are regulated pursuant to Chapter 19.36 KMG.~~

11 3. Tree Removal Permit Application Form

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

- 18 a. A site plan showing the approximate location of significant trees, their size (DBH) and
19 their species, along with the location of structures, driveways, access ways and
20 easements.
- 21 b. For required replacement trees, a planting plan showing location, size and species of the
22 new trees in accordance to standards set forth in KZC 95.33(3) subsection (5)(c) of this
23 section.

24 4. Tree Removal Permit Application Procedure and Appeals

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

31

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

40

<insert> until such time an online permit system is made available at no cost to the applicant

O-4226
Attachment A

5. Tree Removal Allowances

a. Any private property owner of developed property may remove up to two significant trees from their property within a 12-month period without having to apply for a tree removal permit; provided, provided that:

- 1) There is no current active application for development activity for the site;
- 2) The trees were not required to be retained or planted as a condition of previous development activity; and
- 3) All of the additional standards for tree removal and Tree Removal Permits as described in subsections (5)(b) through (5)(e) below are met.

The Department of Planning and Community Development shall establish and maintain a tree removal request form. The form may be used by property owners to request Department review of tree removal for compliance with applicable City regulations.

b. Tree Retention and Replacement Requirements

<insert> two trees

1) Tree Retention. For single-family homes, cottages, carriage units, two/three-unit homes, one significant tree for every 2,500 square feet of land area shall be required to remain on the subject property. When this results in a fraction, the number of trees to remain shall be rounded down to the next whole number. In no case shall the remaining number of trees be less than two trees.

2) Tree Replacement.

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

<insert> both

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

c) For all other uses not listed in subsection (5)(b)(1) above, a Tree Removal Permit is required and the required tree replacement will be based on the required landscaping standards in KZC 95.40 through 95.45.

c. Shoreline Jurisdiction.

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

d. Removal of Hazard or Nuisance Trees

1 Any private property owner seeking to remove any number of significant trees which are
2 a hazard or nuisance from developed or undeveloped property or the public right-of-way
3 shall first obtain approval of a Tree Removal Permit and meet the requirements of this
4 subsection. ~~there is no current application for development activity for the site~~
5 ~~significant trees which were required to be retained by a special regulation contained~~
6 ~~in Chapters 15 through 60 KZC;esignated on an approved Tree Retention Plan to be~~
7 ~~retained pursuant to KZC 95.30;~~

8 1) Tree Risk Assessment. ~~Additional Applicant Requirements.~~If the nuisance or
9 hazard condition is not obvious ~~An an arborist report tree risk assessment~~
10 ~~prepared by a qualified professional~~ explaining how the tree(s) meet the
11 definition of a nuisance or hazard tree is required. ~~fit the criteria in subsection~~
12 ~~(4)(b) or (4)(c) of this section if removal is based on nuisance or hazard and the~~
13 ~~nuisance or hazard condition is not obvious~~ Removal of nuisance or hazard trees
14 does not count toward the tree removal limit if the nuisance or hazard is
15 supported by a report prepared by a qualified professional and approved by the
16 City.

17 2) Trees in Critical Areas or Critical Areas Buffers. For hazard or nuisance trees in
18 (1) easements dedicated to ensure the protection of vegetation; ~~or in~~(2) critical
19 areas, or (3) critical area buffers, a planting plan is required to mitigate the
20 removal of the hazard or nuisance tree. ~~If a tree is considered a nuisance or~~
21 ~~hazard in a critical area or its buffer,~~ the priority action is to create a "snag" or
22 wildlife tree with the subject tree. If creation of a snag is not feasible, then the
23 felled tree shall be left in place unless the Planning Official permits its removal in
24 writing.

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

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

39 3) Street Trees. Street trees may only be removed if determined to be a hazard or
40 nuisance. If the removal request is for street trees, the Public Works Official
41 may consider whether the tree(s) is-are now, or may be in the future, part of the
42 City's plans for the right-of-way. The City shall require a one-for-one tree

1 ~~replacement in a suitable location. 4.—Standards and criteria for approval to~~
2 ~~remove street tree. An abutting property owner may apply for permission to~~
3 ~~remove a street tree by filing a written application with the department of public~~
4 ~~works. An application to remove a street tree shall be reviewed by the director of~~
5 ~~public works, or his or her designee. The director shall consider the following~~
6 ~~factors in determining whether to grant or deny the application: (1) whether the~~
7 ~~tree is a hazard tree or nuisance tree; (2) the location of the tree in the right of~~
8 ~~way; (3) the size and type of tree and whether it constitutes a “significant tree”~~
9 ~~as defined in the Kirkland Zoning Code; (4) whether the tree is now, or may be~~
10 ~~in the future, part of the city’s plans for the right of way; (5) whether the~~
11 ~~property owner is willing to mitigate the consequences of removal of the tree by~~
12 ~~planting a new tree or trees in a more suitable location; and (6) any other factor~~
13 ~~that the director deems relevant or appropriate. Any failure by the applicant or~~
14 ~~his or her agents to adhere to conditions imposed on tree removal by the city~~
15 ~~under this chapter shall constitute a violation of this chapter and is subject to~~
16 ~~enforcement under this chapter. (Ord. 3891 § 3, 2003)~~

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

20 e. Forest Management Plan

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

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

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

33 ~~c) A reforestation plan that includes location, size, species, and timing of~~
34 ~~installation;~~

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

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

- 1 | ~~1a)~~-Trees to remain should be dominant or co-dominant in the stand, healthy and
2 | wind-firm.
- 3 | ~~2b)~~-No removal of trees from critical areas and their buffers, unless otherwise
4 | permitted by this chapter.
- 5 | ~~3c)~~-No removal of ~~landmark or~~ specimen trees, unless otherwise permitted by this
6 | chapter.
- 7 | ~~4d)~~-No removal of healthy trees that would cause trees on adjacent properties to
8 | become hazardous.
- 9 | ~~5e)~~-The reforestation plan ensures perpetuity of the wooded areas. The size of
10 | planted trees for reforestation shall be a minimum of three feet tall.
- 11 | ~~6f)~~-Logging operations shall be conducted so as to expose the smallest practical
12 | area of soil to erosion for the least possible time. To control erosion, native
13 | shrubs, ground cover and stumps shall be retained where feasible. Where not
14 | feasible, appropriate erosion control measures to be approved by the City shall
15 | be implemented.
- 16 | ~~7g)~~-Removal of tree debris shall be done pursuant to Kirkland Fire Department
17 | standards.
- 18 | ~~8h)~~-Recommended maintenance prescription for retained trees with a specific
19 | timeline for such management.

20 | **95.25 Alternative Compliance Sustainable Site Development**

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

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

1 alternative measures and procedures shall be reviewed by the Planning Official, who may
2 approve, approve with conditions, or deny the request.

3 **95.30 Tree Retention, ~~Protection and Density~~ Associated with Development Activity**

4 1. Introduction.

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

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

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

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

33 2. Tree Retention Plan Required

34 ~~a. Requirement Established.~~ An applicant for a ~~tree removal~~ development permit must
35 submit a tree retention plan that complies with this section. A qualified professional may be
36 required to prepare certain components of a tree retention plan at the applicant's expense.
37 If proposed development activities call for more than one tree retention plan
38 ~~level requirement component,~~ the more stringent tree retention plan level
39 ~~requirement component with the more stringent requirements~~ shall apply; provided, that the
40 Planning Official may require a combination of tree plan components based on the nature of

1 the proposed development activities. If the proposed activity is not clearly identified in this
2 chapter, the Planning Official shall determine the appropriate tree retention plan
3 requirements.

4 ~~b. Tree Plan and Retention Requirements. The following sets chart in subsection (5) sets~~
5 ~~forth the tree retention plan requirements different tree plans required for development~~
6 ~~activities or and associated tree removal requests requiring a tree removal permit.~~
7 Applicants for development are encouraged to confer with City staff as early in the design
8 process as possible so that the applicable tree planting and retention concepts can be
9 incorporated into the design of the subject property. ~~Each plan sets forth the required~~
10 ~~components and retention standards for each tree plan.~~ The Planning Official may waive a
11 component ~~for a of the~~ tree retention plan, if ~~he or she~~ the Planning Official determines that
12 the information is not necessary.

13 3. Tree Retention Plan Review

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

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

23 4. Tree Retention Plan Components

24 ~~Qualified Professional Reports. Reports prepared by a qualified professional The tree~~
25 ~~retention plan shall contain the following information as specified in the chart in subsection~~
26 ~~4(5) below, unless waived by the Planning Official:~~

27 a. A tree inventory containing the following:

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

1 ~~7) measured dripline of significant trees that are on adjacent property with driplines~~
2 ~~extending over the subject property line.~~

3 b. A site plan depicting the following:

4 1) Location of all proposed improvements, including building footprint, access, and
5 utilities, ~~with applicable setbacks, buffers, and required landscaped areas clearly~~
6 identified. If a short plat or subdivision is being proposed and the location of all
7 proposed improvements cannot be established, a phased tree retention plan review
8 is required as described in subsection (6)(a);

9 2) Accurate location of significant trees on the subject property (surveyed locations
10 may be required). ~~The Site plan must also include and the~~ approximate trunk
11 location and ~~driplines-critical root zone~~ of significant trees that are on adjacent
12 property with driplines extending over the subject property line;

13 3) Trees labeled corresponding to the tree inventory numbering system;

14 ~~4) Driplines measured relative to visible site features~~4) Location of tree protection
15 measures;

16 5) Indicate H limits of disturbance drawn to scale around all trees potentially impacted
17 by site disturbances ~~as a result~~resulting from grading, demolition, or construction
18 activities (including approximate LOD of offsite trees with overhanging driplines);

19 6) Proposed Tree status (trees to be removed or retained) ~~(4)~~(noted by an 'X' or by
20 ghosting out;

21 ~~7) Final plan showing rRetained trees and pProposed locations of any supplemental~~
22 ~~trees-~~ and any required trees in order to meet tree density or minimum number of
23 trees as outlined in ~~subsections (2)(b)(1)(d) and (2)(b)(1)(e) of this section~~KZC
24 95.33.

25 c. An arborist report containing the following:

26 1) A complete description of each tree's health, condition, and viability;

27 2) A description of the method(s) used to determine the limits of disturbance (i.e.: critical root zone, root plate diameter, or a case-by-case basis description for
28 individual trees);

29 3) Any special instructions specifically outlining any for work ~~within-proposed within the~~
30 limits of the disturbance protection area (i.e.: (hand-digging, tunneling, root
31 pruning, any grade changes, clearing, monitoring, and aftercare)~~maximum-grade~~
32 change);

33 4) If aFor trees is-not viable for retention, a description of the reason(s) for removal
34 must be soundly based on poor health, high risk of failure due to structure, defects,
35 unavoidable isolation (windfirmness), or unsuitability of species, etc. and for which
36 no reasonable alternative action is possible must be given (pruning, cabling, etc.);
37

38 5) Describe ~~T~~the impact of necessary tree removal to the remaining trees, including
39 those in a grove or on adjacent properties, ~~must also be discussed;~~

- 1 6) For development applications, a discussion of timing and installation of tree
 2 protection measures that must include fencing and be in accordance with the tree
 3 protection standards as outlined in ~~subsection (6)~~ KZC 95.34 of this section; and
 4 7) The suggested location and species of supplemental trees to be used when required.
 5 The report shall include planting and maintenance specifications pursuant to KZC
 6 95.45-50 and 95.5051.
- 7 5. Tree Retention Plan. The applicant shall submit a Tree Retention Plan that includes the
 8 components identified in the following chart based on the proposed development activity.

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 95.30(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 95.30(4)(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			X	

trees with a High Retention Value in required landscaping areas				
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-III, ~~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 III
11 ~~requirements unless subsection (6)(a) Phased Review below applies.~~

- 1 (4) To retain trees with a High Retention Value~~Type 1 trees in required yards~~, the applicant
2 shall pursue, where feasible, applicable variations in the development standards of this
3 code as outlined in ~~subsections (4)(a)(2) and (4)(a)(3)~~KZC 95.32 of this ~~section~~chapter.
4 (5) Prior to short plat or subdivision recording
5

6 6. Additional Tree Retention Plan Standards for Short Plat and Subdivisions

7 a. Phased Review.

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

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

16 b. Modifications to Tree Retention Plan for Short Plats and Subdivisions. A Tree Retention Plan
17 modification request shall contain information as determined by the Planning Official based on
18 the requirements in KZC 95.30(5) Tree Retention Plan. The fee for processing a modification
19 request shall be established by City ordinance.

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

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

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

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

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

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

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

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

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

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

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

14 **95.32 - Incentives and Variations to Development Standards**

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

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

23 1. Common Recreational Open Space. Reductions or variations of the area, width, or
24 composition of required common recreational open space, may be granted.

25 2. Parking Areas and Access. Variations in parking lot design and/or access driveway
26 requirements may be granted when the Public Works and Planning Officials both determine
27 the variations to be consistent with the intent of City policies and codes.

28 3. Required Yards. Initially, the applicant shall pursue options for placement of required yards
29 as permitted by other sections of this code, such as selecting one front required yard in the
30 RSX zone and adjusting side yards in any zone to meet the 15-foot total as needed for each
31 structure on the site. The Planning Official may also reduce the front or side required yards
32 provided that:

33 a. No required side yard shall be less than five feet; and

34 b. The required front yard shall not be reduced by more than five feet in residential zones.
35 There shall not be an additional five feet of reduction beyond the allowance provided for
36 covered entry porches.

- 1 4. Stormwater. Requirements pertaining to stormwater may be varied if approved by the Public
2 Works Official under KMC 15.52.060.
- 3 5. Additional Variations. In addition to the variations described above, the Planning Official is
4 authorized to require site plan alterations to retain ~~Type 1~~ trees with a High Retention
5 Value. Such alterations include minor adjustments to the location of building footprints,
6 adjustments to the location of driveways and access ways, or adjustment to the location of
7 walkways, easements or utilities. The Planning Official and the applicant shall work in good
8 faith to find reasonable solutions.

9 **95.33 - Tree Density Requirement**

10 ~~a. Minimum Tree Density Requirement Established.~~ The required minimum tree density is 30
11 tree credits per acre for single-family homes, cottages, carriage units, two/three-unit homes,
12 short plats, and/or subdivisions and associated demolition and land surface modification.
13 ~~development requiring a Tree Plan I — Major and Tree Plan III.~~ For individual lots in a short
14 subdivision or subdivision with an approved Tree Retention Plan III, the tree density shall be
15 calculated ~~based on the entire~~ for each lot within the short plat or subdivision. The tree density
16 may consist of existing trees pursuant to the ~~priority established in subsection (4)(a)(1) of this~~
17 ~~section~~ tree's retention value, or supplemental trees or a combination of existing and
18 supplemental trees pursuant to subsection ~~(5)(e)(2)~~ of this section. Existing trees transplanted
19 to an area on the same site shall not count toward the required density unless approved by the
20 Urban Forester based on transplant specifications provided by a qualified professional that will
21 ensure a good probability for survival.

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

26 Tree density calculation for existing individual trees:

- 27 a. Diameter breast height (DBH) of the tree shall be measured in inches.
- 28 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

1 Example: a 7,200-square-foot lot would need five tree credits ($7,200/43,560 = 0.165 \times$
2 $30 = (4.9)$ or five). The density for the lot could be met with ~~a one existing~~ 16-inch tree
3 and one ~~existing~~ six-inch tree ~~existing~~ on-site.

4 2. Supplemental Trees Planted to Meet Minimum Density Requirement. For sites and activities
5 requiring a minimum tree density and where the existing trees to be retained do not meet
6 the minimum tree density requirement, supplemental trees shall be planted to achieve the
7 required minimum tree density.

8 3. Tree Location. In designing a development and in meeting the required minimum tree
9 density the trees shall be planted in the following order of priority:

10 a. On-Site. The preferred locations for new trees are:

11 1) In preserved groves, critical areas or their buffers.

12 2) Adjacent to stormwater facilities as approved by Public Works under KMC 15.52.060.

13 3) Entrance landscaping, traffic islands and other common areas in residential
14 subdivisions.

15 4) Site perimeter ~~Site Perimeter~~— The area of the subject property that is within 10
16 feet from the property line.

17 5) On individual residential building lots.

18 b. Off-Site. When room is unavailable for planting the required trees on-site, then they may
19 be planted at another approved location in the City.

20 c. City Forestry Account. When the Planning Official determines on-site and off-site
21 locations are unavailable, then the applicant shall pay an amount of money
22 approximating the current market value of the supplemental trees into the City forestry
23 account.

24 4. Minimum Size and Tree Density Value for Supplemental Trees. The required minimum size
25 of the supplemental tree worth one tree credit shall be six feet tall for a conifer and two-
26 inch caliper for deciduous or broad-leaf evergreen tree. Additional credits may be awarded
27 for larger supplemental trees. The installation and maintenance shall be pursuant to KZC
28 95.45-95.50 and 95.50-95.51 respectively.

29

30

1 **95.34 - Tree Protection during Development Activity**

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

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

10 2. Protective Barrier. Before development, land clearing, filling or any land alteration, the
11 applicant shall:

12 a. Erect and maintain ~~a~~-readily visible temporary protective tree fencing along the limits of
13 disturbance which completely surrounds the protected area of all retained trees or
14 groups of trees. Fences shall be constructed of chain link and be at least ~~four~~six feet
15 high, unless other type of fencing is authorized by the Planning Official.

16 b. Install highly visible signs spaced no further than 15 feet along the entirety of the
17 protective tree fence. Said sign must be approved by the Planning Official and shall state
18 at a minimum "Tree Protection Area, Entrance Prohibited" and provide the City phone
19 number for code enforcement to report violations.

20 c. Prohibit excavation or compaction of earth or other potentially damaging activities within
21 the barriers; provided, that the Planning Official may allow such activities approved by a
22 qualified professional and under the supervision of a qualified professional retained and
23 paid for by the applicant.

24 d. Maintain the protective barriers in place for the duration of the project until the Planning
25 Official authorizes their removal.

26 e. Ensure that any approved landscaping done in the protected zone subsequent to the
27 removal of the barriers shall be accomplished with light machinery or hand labor.

28 f. In addition to the above, the Planning Official may require the following:

29 1) If equipment is authorized to operate within the critical root zone, cover the areas
30 adjoining the critical root zone of a tree with mulch to a depth of at least six inches
31 or with plywood or similar material in order to protect roots from damage caused by
32 heavy equipment.

33 2) Minimize root damage by excavating a two-foot-deep trench, at edge of critical root
34 zone, to cleanly sever the roots of trees to be retained.

35 3) Corrective pruning performed on protected trees in order to avoid damage from
36 machinery or building activity.

1 4) Maintenance of trees throughout construction period by watering and fertilizing.

2 3. Grade.

3 a. The grade shall not be elevated or reduced within the critical root zone of trees to be
4 preserved without the Planning Official's authorization based on recommendations from
5 a qualified professional. The Planning Official may allow coverage of up to one half of
6 the area of the tree's critical root zone with light soils (no clay) to the minimum depth
7 necessary to carry out grading or landscaping plans, if it will not imperil the survival of
8 the tree. Aeration devices may be required to ensure the tree's survival.

9 b. If the grade adjacent to a preserved tree is raised such that it could slough or erode into
10 the tree's critical root zone, it shall be permanently stabilized to prevent suffocation of
11 the roots.

12 c. The applicant shall not install an impervious surface within the critical root zone of any
13 tree to be retained without the authorization of the Planning Official. The Planning
14 Official may require specific construction methods and/or use of aeration devices to
15 ensure the tree's survival and to minimize the potential for root-induced damage to the
16 impervious surface.

17 d. To the greatest extent practical, utility trenches shall be located outside of the critical
18 root zone of trees to be retained. The Planning Official may require that utilities be
19 tunneled under the roots of trees to be retained if the Planning Official determines that
20 trenching would significantly reduce the chances of the tree's survival.

21 e. Trees and other vegetation to be retained shall be protected from erosion and
22 sedimentation. Clearing operations shall be conducted so as to expose the smallest
23 practical area of soil to erosion for the least possible time. To control erosion, it is
24 encouraged that shrubs, ground cover and stumps be maintained on the individual lots,
25 where feasible.

26 4. Directional Felling. Directional felling of trees shall be used to avoid damage to trees
27 designated for retention.

28 5. Additional Requirements. The Planning Official may require additional tree protection
29 measures that are consistent with accepted urban forestry industry practices.

30 **95.40 Required Landscaping**

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

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

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

- 3 a. Various use zone charts, in Chapters 15 through 60 KZC, establish additional or special
4 buffering requirements for some uses in some zones.
- 5 b. Chapter 85 KZC, Geologically Hazardous Areas, addresses the retention of vegetation on
6 steep slopes.
- 7 c. Chapter 90 KZC, Drainage Basins, addresses vegetation within sensitive areas and
8 sensitive area buffers.
- 9 d. Chapter 110 KZC and Chapter 19.36 KMC address vegetation within rights-of-way,
10 except for the I-405, SR-520, and Burlington Northern rights-of-way.
- 11 e. KZC 115.135, Sight Distance at Intersections, which may limit the placement of
12 landscaping in some areas.
- 13 f. Chapter 22 KMC addresses trees in subdivisions.

14 2. Use of Significant Existing Vegetation.

- 15 a. General. The applicant shall apply subsection KZC ~~95.35(4)~~95.30(3)-Tree Retention Plan
16 Review Procedure and KZC 95.32-Incentives and Variations to Development Standards
17 to retain existing trees and vegetation in areas subject to the landscaping standards of
18 this section. The Planning Official shall give substantial weight to the retained trees and
19 vegetation when determining the applicant's compliance with this section.
- 20 b. Supplement. The City may require the applicant to plant trees, shrubs, and groundcover
21 according to the requirements of this section to supplement the existing vegetation in
22 order to provide a buffer at least as effective as the required buffer.
- 23 c. Protection Techniques. The applicant shall use the protection techniques described in
24 KZC ~~95.35(6)~~95.34 to ensure the protection of significant existing vegetation.

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

31 **95.415- Supplemental Plantings.**

- 32 1. General. The applicant shall provide the supplemental landscaping specified in
33 subsection ~~(5)(b)~~(2) of this section in any area of the subject property that:
 - 34 a. Is not covered with a building, vehicle circulation area or other improvement; and

- 1 b. Is not a critical area, critical area buffer, or in an area to be planted with required
2 landscaping; and
- 3 c. Is not committed to and being used for some specific purpose.
- 4 2. Standards. The applicant shall provide the following at a minimum:
- 5 a. Living plant material which will cover 80 percent of the area to be landscaped within
6 two years. If the material to be used does not spread over time, the applicant shall
7 re-plant the entire area involved immediately. Any area that will not be covered with
8 living plant material must be covered with nonliving groundcover.
- 9 b. One tree for each 1,000 square feet of area to be landscaped. At the time of
10 planting, deciduous trees must be at least two inches in caliper and coniferous trees
11 must be at least five feet in height.
- 12 c. If a development requires approval through Process I, IIA, IIB or III as described in
13 Chapters [145](#), 150, 152 and 155 KZC, respectively, the City may require additional
14 vegetation to be planted along a building facade if:
- 15 1) The building facade is more than 25 feet high or more than 50 feet long; or
- 16 2) Additional landscaping is necessary to provide a visual break in the facade.
- 17 d. In RHBD varieties of rose shrubs or ground cover along with other plant materials
18 shall be included in the on-site landscaping.
- 19 e. If development is subject to Design Review as described in Chapter 142, the City will
20 review plant choice and specific plant location as part of the Design Review
21 approval. The City may also require or permit modification to the required plant size
22 as part of Design Review approval.

23 **4.95.42 Minimum Land Use Buffer Requirements.**

24 The applicant shall comply with the provisions specified in the following chart and with all
25 other applicable provisions of this chapter. Land use buffer requirements may apply to the
26 subject property, depending on what permitted use exists on the adjoining property or, if no
27 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	Medium or high density residential use or if no permitted use exists on the adjoining property then a medium	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
	↓				

		a low density zone.	density or high density zone.		or industrial zone.
A		Must comply with KZC <u>95.40(6)(a) subsection (1)</u> (Buffering Standard 1)	Must comply with KZC <u>subsection (1) 95.40(6)(a)</u> (Buffering Standard 1)	Must comply with <u>subsection (2) KZC 95.40(6)(b)</u> (Buffering Standard 2)	
B		Must comply with KZC <u>subsection (1) 95.40(6)(a)</u> (Buffering Standard 1)	Must comply with KZC <u>subsection (1) 95.40(6)(a)</u> (Buffering Standard 1)		
C		Must comply with KZC <u>subsection (1) 95.40(6)(a)</u> (Buffering Standard 1)	Must comply with KZC <u>95.40(6)(b) subsection (2)</u> (Buffering Standard 2)		
D		Must comply with KZC <u>subsection (2) 95.40(6)(b)</u> (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, <u>this section</u> , KZC <u>95.40(6)95.42</u> 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:

- 1 a. Trees planted at the rate of one tree per 20 linear feet of land use buffer, with
2 deciduous trees of two and one-half inch caliper, minimum, and/or coniferous trees
3 eight feet in height, minimum. At least 70 percent of trees shall be evergreen. The trees
4 shall be distributed evenly throughout the buffer, spaced no more than 20 feet apart on
5 center.
- 6 b. Large shrubs or a mix of shrubs planted to attain coverage of at least 60 percent of the
7 land use buffer area within two years, planted at the following sizes and spacing,
8 depending on type:
- 9 1) Low shrub – (mature size under three feet tall), one- or two-gallon pot or balled and
10 burlapped equivalent);
- 11 2) Medium shrub – (mature size from three to six feet tall), two- or three-gallon pot or
12 balled and burlapped equivalent);
- 13 3) Large shrub – (mature size over six feet tall), five-gallon pot or balled and burlapped
14 equivalent).
- 15 c. Living ground covers planted from either four-inch pot with 12-inch spacing or one-
16 gallon pot with 18-inch spacing to cover within two years 60 percent of the land use
17 buffer not needed for viability of the shrubs or trees.
- 18 2. For standard 2, the applicant shall provide a five-foot-wide landscaped strip with a six-foot-
19 high solid screening fence or wall. Except for public utilities, the fence or wall must be
20 placed on the outside edge of the land use buffer or on the property line when adjacent to
21 private property. For public utilities, the fence or wall may be placed either on the outside or
22 inside edge of the landscaping strip. A fence or wall is not required when the land use
23 buffer is adjacent and parallel to a public right-of-way that is improved for vehicular use.
24 See KZC [115.40](#) for additional fence standards. The landscaped strip must be planted as
25 follows:
- 26 a. One row of trees planted no more than 10 feet apart on center along the entire length
27 of the buffer, with deciduous trees of two inch caliper, minimum, and/or coniferous
28 trees at least six feet in height, minimum. At least 50 percent of the required trees shall
29 be evergreen.
- 30 b. Living ground covers planted from either four-inch pot with 12-inch spacing or one-
31 gallon pot with 18-inch spacing to cover within two years 60 percent of the land use
32 buffer not needed for viability of the trees.
- 33 3. Plant Standards. All plant materials used shall meet the most recent American Association of
34 Nurserymen Standards for nursery stock: ANSI Z60.1.
- 35 4. Location of the Land Use Buffer. The applicant shall provide the required buffer along the
36 entire common border between the subject property and the adjoining property.

- 1 5. Multiple Buffering Requirement. If the subject property borders more than one adjoining
2 property along the same property line, the applicant shall provide a gradual transition
3 between different land use buffers. This transition must occur totally within the area which
4 has the less stringent buffering requirement. The specific design of the transition must be
5 approved by the City.
- 6 6. Adjoining Property Containing Several Uses. If the adjoining property contains several
7 permitted uses, the applicant may provide the least stringent land use buffer required for
8 any of these uses.
- 9 7. Subject Property Containing Several Uses. If the subject property contains more than one
10 use, the applicant shall comply with the land use buffering requirement that pertains to the
11 use within the most stringent landscaping category that abuts the property to be buffered.
- 12 8. Subject Property Containing School. If the subject property is occupied by a school, land use
13 buffers are not required along property lines adjacent to a street.
- 14 9. Encroachment into Land Use Buffer. Typical incidental extensions of structures such as
15 chimneys, bay windows, greenhouse windows, cornices, eaves, awnings, and canopies may
16 be permitted in land use buffers as set forth in KZC [115.115\(3\)\(d\)](#); provided, that:
 - 17 a. Buffer planting standards are met; and
 - 18 b. Required plantings will be able to attain full size and form typical to their species.

19 **95.43k Outdoor ~~use~~Use, ~~activity~~Activity, and ~~storage~~Storage**

20 Outdoor use, activity, and storage (KZC [115.105\(2\)](#)) must comply with required land use buffers
21 for the primary use, except that the following outdoor uses and activities, when located in
22 commercial or industrial zones, are exempt from KZC [115.105\(2\)\(c\)\(1\)](#) and [\(2\)\(c\)\(2\)](#) as stated
23 below:

- 24 1. That portion of an outdoor use, activity, or storage area which abuts another outdoor use,
25 activity, or storage area which is located on property zoned for commercial or industrial use.
- 26 2. Outdoor use, activity, and storage areas which are located adjacent to a fence or structure
27 which is a minimum of six feet above finished grade; and do not extend outward from the
28 fence or structure more than five feet; provided, that the total horizontal dimensions of
29 these areas shall not exceed 50 percent of the length of the facade or fence (see Plate 11).
- 30 3. If there is an improved path or sidewalk in front of the outdoor storage area, the outdoor
31 use, activity or storage area may extend beyond five feet if a clearly defined walking path at
32 least three feet in width is maintained and there is adequate pedestrian access to and from
33 the primary use. The total horizontal dimension of these areas shall not exceed 50 percent
34 of the length of the facade of the structure or fence (see Plate 11).
- 35 4. Outdoor dining areas.

1 5. That portion of an outdoor display of vehicles for sale or lease which is adjacent to a public
2 right-of-way that is improved for vehicular use; provided, that it meets the buffering
3 standards for driving and parking areas in ~~subsections (7)(b)(1)(a) and (7)(b)(1)(b) of this~~
4 ~~sectionKZC 95.45(1)~~; and provided further, that the exemptions of ~~subsection (7)(b)(2) of~~
5 ~~this sectionKZC 95.45(2)~~ do not apply unless it is fully enclosed within or under a building,
6 or is on top of a building and is at least one story above finished grade.

7 6. Outdoor Christmas tree lots and fireworks stands if these uses will not exceed 30 days, and
8 outdoor amusement rides, carnivals and circuses, and parking lot sales which are ancillary
9 to the indoor sale of the same goods and services, if these uses will not exceed seven days.

10 ~~7. Landscaping and Buffering Standards for Driving and Parking Areas.95.44Internal~~
11 ~~Parking Lot Landscaping Requirements~~

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

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

16 ~~2a.~~ The applicant shall arrange the required landscaping ~~required in subsection (7)(a)(1)(a)~~
17 ~~of this section~~ throughout the parking lot to provide landscape islands or peninsulas to
18 separate groups of parking spaces (generally every eight stalls) from one another and
19 each row of spaces from any adjacent driveway that runs perpendicular to the row. This
20 island or peninsula must be surrounded by a six-inch-high vertical curb, be of similar
21 dimensions as the adjacent parking stalls, ~~and planted pursuant to the standards in~~
22 ~~subsection (7)(a)(1)(c) of this section:~~

23 ~~3b.~~ Landscaping shall be installed pursuant to the following standards:

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

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

28 ~~4c.~~ Exception. The requirements of this subsection do not apply to any area that is fully
29 enclosed within or under a building.

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

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

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

1. Perimeter Buffering – General. Except as specified in subsection ~~(7)(b)~~(2) of this section, the applicant shall buffer all parking areas and driveways from abutting rights-of-way and from adjacent property with a five-foot-wide strip along the perimeter of the parking areas and driveways planted as follows (see Figure 95.45.A):

a. One row of trees, two inches in caliper and planted 30 feet on center along the entire length of the strip.

b. Living groundcover planted to attain coverage of at least 60 percent of the strip area within two years.

2. Exception. The requirements of ~~subsection (7)(b)(1) of~~ this section do not apply to any parking area that:

a. Is fully enclosed within or under a building; or

b. Is on top of a building and is at least one story above finished grade; or

c. Serves detached dwelling units exclusively; or

d. Is within any zone that requires design regulation compliance. See below for Design District requirements.

3. Design Districts. If subject to design review, each side of a parking lot that abuts a street, through-block pathway or public park must be screened from that street, through-block pathway or public park by using one or a combination of the following methods (see Figures 95.45.A, B, and C):

a. By providing a landscape strip at least five feet wide planted consistent with ~~subsection (7)(b)(1) of this section~~ [KZC 95.45\(1\)](#), or in combination with the following. In the RHBD Regional Center ([see KZC Figure 92.05.A](#)) a 10-foot perimeter landscape strip along NE 85th Street is required planted consistent with subsection ~~(7)(b)~~(1) of this section.

b. The hedge or wall must extend at least two feet, six inches, and not more than three feet above the ground directly below it.

c. The wall may be constructed of masonry or concrete, if consistent with the provisions of [KZC 92.35\(1\)\(g\)](#), in building material, color and detail, or of wood if the design and materials match the building on the subject property.

d. In JBD zones:

- 1 1) If the street is a pedestrian-oriented street, the wall may also include a continuous
2 trellis or grillwork, at least five feet in height above the ground, placed on top of or
3 in front of the wall and planted with climbing vines. The trellis or grillwork may be
4 constructed of masonry, steel, cast iron and/or wood.
- 5 2) If the wall abuts a pedestrian-oriented street, the requirements of this subsection
6 may be fulfilled by providing pedestrian weather protection along at least 80 percent
7 of the frontage of the subject property.
- 8 e. If development is subject to Design Review as described in Chapter 142 KZC, the City
9 will review plant choice and specific plant location as part of the Design Review
10 approval. The City may also require or permit modification to the required plant size as
11 part of Design Review approval.
- 12 4. Overlapping Requirements. If buffering is required ~~under subsection (6) of this section in~~
13 KZC 95.42, Land Use Buffering Standards, and by this subsection, the applicant shall utilize
14 the more stringent buffering requirement.

Perimeter Parking Lot Landscaping

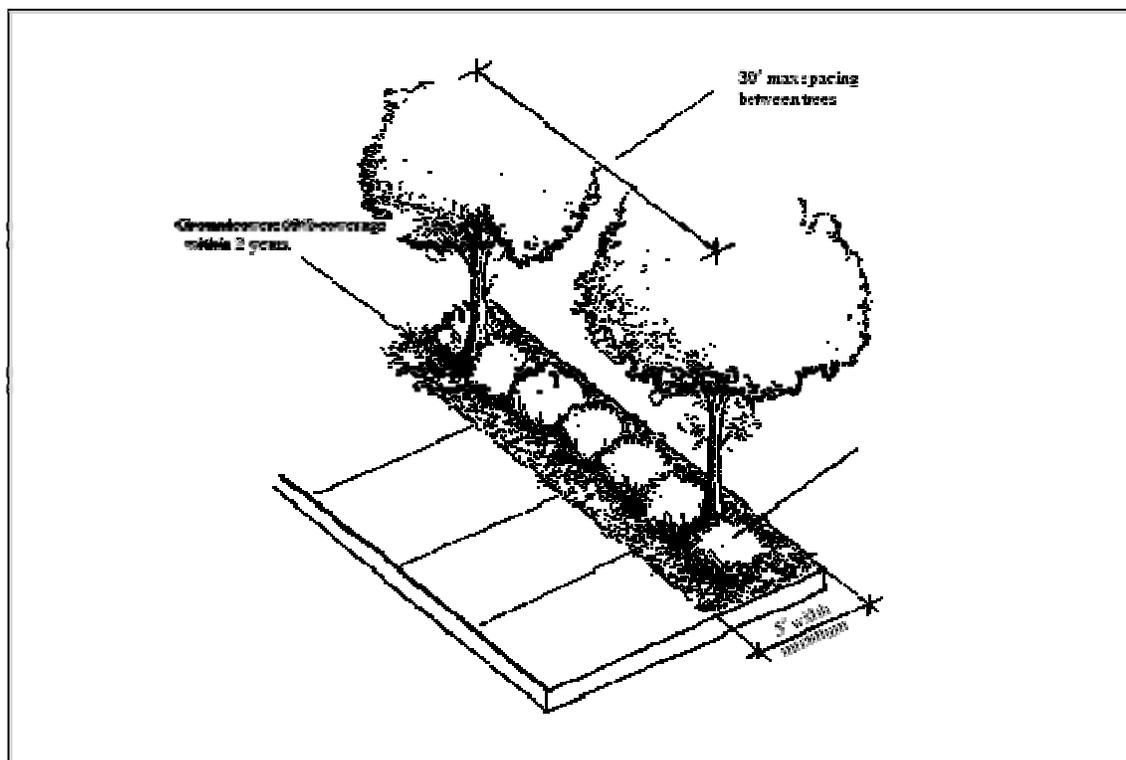
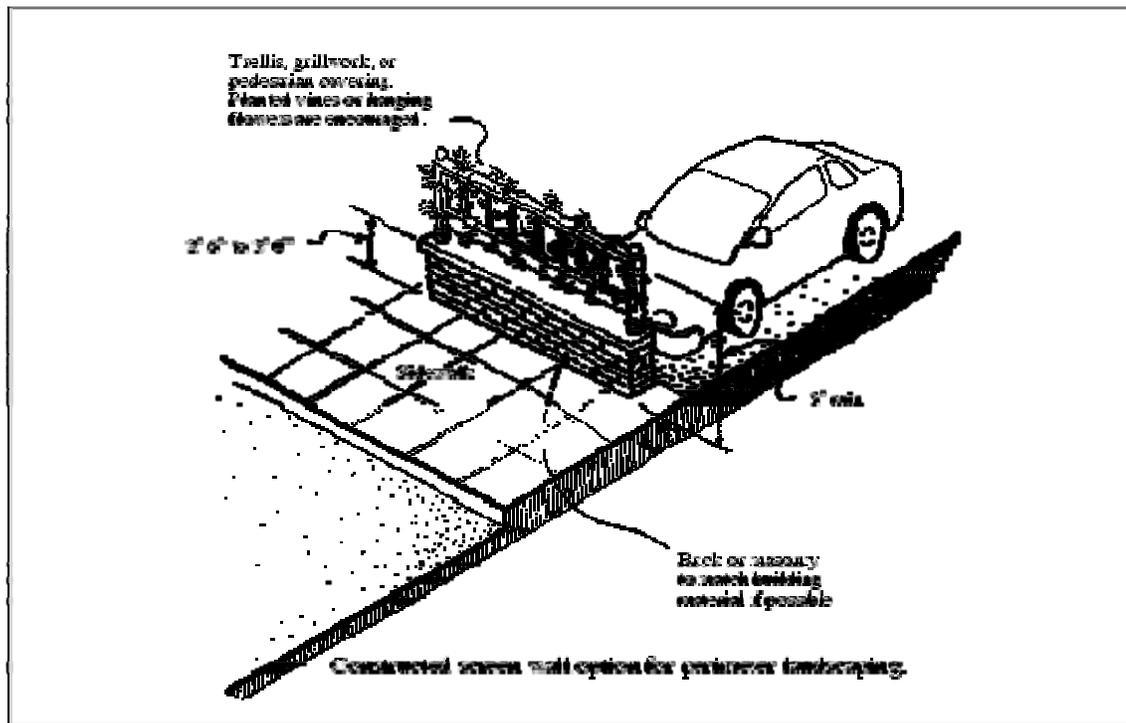


FIGURE 95.45.A

Perimeter Parking – Examples of Various Screen Wall Designs



1
2
3

FIGURE 95.45.B

Perimeter Parking – Examples of Various Screen Wall Designs

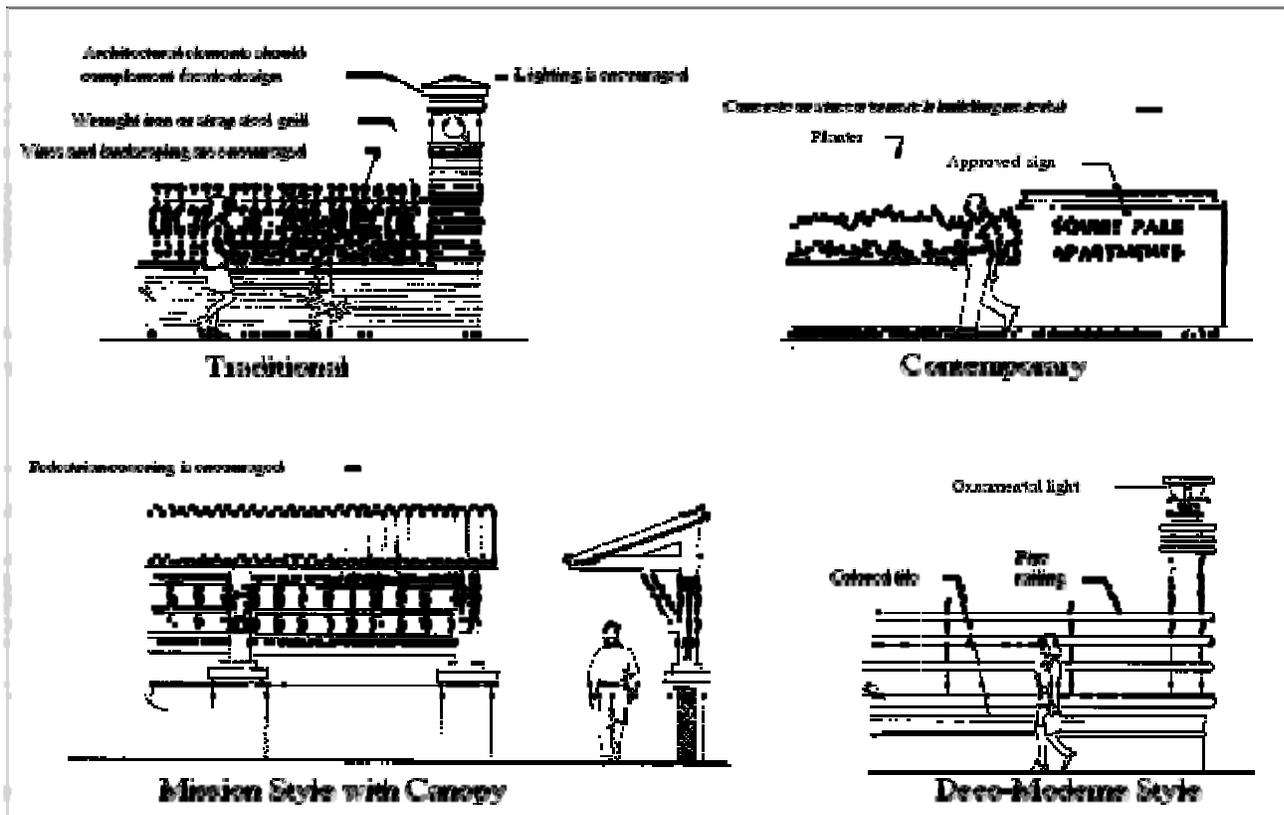


FIGURE 95.45.C

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
27 of the property owner to maintain street trees abutting their property pursuant to KZC
28 95.21.

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

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

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

- 1) The tree and associated vegetation are in a grove that is protected pursuant to subsection (3) of this section; or
 - 2) The tree or vegetation is considered to be a public benefit related to approval of a planned unit development; or
 - 3) The tree or vegetation was retained to partially or fully meet requirements of KZC [95.40 through KZC 95.45](#), Required Landscaping.
3. Maintenance of Preserved Grove. Any applicant who has a grove of trees identified for preservation on an approved ~~tree plan~~ Tree Retention Plan pursuant to KZC [95.35\(4\)\(a\)\(1\)\(b\)](#) [95.30\(2\)](#) shall provide prior to occupancy the legal instrument acceptable to the City to ensure preservation of the grove and associated vegetation in perpetuity, except that the agreement may be extinguished if the Planning Official determines that preservation is no longer appropriate.
 4. Maintenance of Critical Area and Critical Area Buffers. In critical areas and their buffers, native vegetation is not to be removed without City approval pursuant to KZC [95.35\(4\)\(e\)](#) [95.23\(5\)\(d\)](#). However, it is the responsibility of the property owner to maintain critical areas and their buffers by removing non-native, invasive, and noxious plants in a manner that will not harm critical areas or their buffers. See also subsection (6) of this section and Chapters [85](#) and [90](#) KZC for additional requirements for trees and other vegetation within critical areas and critical area buffers.
 5. Non-Native Invasive and Noxious Plants. It is the responsibility of the property owner to remove non-native invasive plants and noxious plants from the vicinity of any tree or other vegetation that the City has required to be planted or protected. Removal must be performed in a manner that will not harm the tree or other vegetation that the City has required to be planted or protected.
 6. Pesticides, Herbicides, and Fertilizer. The use of plant material requiring excessive pesticide or herbicide applications to be kept healthy and attractive is discouraged. Pesticide, herbicide, and fertilizer applications shall be made in a manner that will prevent their unintended entry into waterways, wetlands, and storm drains. No application shall be made within 50 feet of a waterway or wetland or a required buffer as established by City codes, whichever is greater, unless done so by a state certified applicator with approval of the Planning Official, and is specifically authorized in an approved mitigation plan or otherwise authorized in writing by the Planning Official.
 7. Landscape Plans and Utility Plans. Landscape plans and utility plans shall be coordinated. In general, the placement of trees and large shrubs should adjust to the location of required utility routes both above and below ground. Location of plants shall be based on the plant's mature size both above and below ground. See the Kirkland Plant List for additional 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 [Tree Retention Plan](#) 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
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~~ the Planning Official
30 determines that the circumstances do not warrant imposition of civil penalties in addition
31 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 [95.33\(3\)\(c\)](#) shall be used for the purposes set forth in this section. In
23 addition, 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 | ~~e. Identification and maintenance of landmark trees;~~
- 2 | ~~ec.~~ 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.

REVISIONS TO KIRKLAND ZONING CODE NEW CODE REFERENCES TO REVISED KZC CHAPTER 95

KZC 90.05 User Guide

These regulations apply to activities, work, and conditions in or near any stream, wetland, frequently flooded area, or lake in the City. These regulations add to and in some cases supersede other City regulations. Anyone interested in conducting any development activity on or near a wetland, stream, lake, or frequently flooded area; wishing to participate in the City's decision on a proposed development on or near any of these areas; or wishing to have a determination made as to the presence of one of these areas on his or her property, should read these regulations. See also KZC ~~95.23.5(d)~~ ~~95.35(4)(d)~~, ~~Tree Plan Review Standards – Trees in Critical Areas or Critical Area Buffers~~; and KZC ~~95.45(12)~~ ~~95.50.11~~, Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers.

90.45 Wetland Buffers and Setbacks

1. No land surface modification shall occur and no improvement may be located in a wetland or its buffer, except as provided in this section. See also KZC ~~95.35(4)(d)~~ ~~95.23(5)(d)(2)~~, ~~Tree Plan Review Standards – Trees in Critical Areas or Critical Area Buffers~~; and KZC ~~95.45(12)~~ ~~95.50(11)~~, Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Required, or standard, buffers for wetlands are as follows:

90.65 Wetland Restoration

Planning Official approval is required prior to wetland restoration. The Planning Official may permit or require the applicant or property owner to restore and maintain a wetland and/or its buffer by removing material detrimental to the area, such as debris, sediment, or vegetation. The Planning Official may also permit or require the applicant to restore a wetland or its buffer through the addition of native plants and other habitat features. See also KZC ~~95.23(5)(d)(2)~~ ~~95.35(4)(d)~~, ~~Tree Plan Review Standards – Trees in Critical Areas or Critical Area Buffers~~; and KZC ~~95.50(11)~~ ~~95.45(12)~~, Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Restoration may be required whenever a condition detrimental to water quality or habitat exists. When wetland restoration is required by the City, the requirements of KZC 90.55(4), Compensatory Mitigation, shall apply.

90.90 Stream Buffers and Setbacks

1. Stream Buffers – No land surface modification shall occur and no improvement may be located in a stream or its buffer, except as provided in this section. See also KZC ~~95.23(5)(d)(2)~~ ~~95.35(4)(d)~~, ~~Tree Plan Review Standards – Trees in Critical Areas or Critical Area Buffers~~; and KZC ~~95.50(11)~~ ~~95.45(12)~~, Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Required, or standard, buffers for streams are as follows:

90.120 Stream Rehabilitation

Planning Official approval is required prior to stream rehabilitation. The Planning Official may permit or require the applicant or property owner to restore and maintain a stream and/or its buffer by removing material detrimental to the stream and its surrounding area such as debris, sediment, or vegetation. The Planning Official may also permit or require the applicant to restore a stream or its buffer through the addition of native plants and other habitat features. See also KZC ~~95.23(5)(d)(2)95.35(4)(d)~~, ~~Free Plan Review Standards~~—Trees in Critical Areas or Critical Area Buffers; and KZC ~~95.50(11)95.45(12)~~, Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Restoration may be required at any time that a condition detrimental to water quality or habitat exists. When stream rehabilitation is required by the City, the mitigation plan and monitoring requirements of KZC [90.55\(4\)](#), shall apply.

KZC 92.10.3. Building Placement In RHBD and TLN

- a. Building Location Featuring Pedestrian-Oriented Facades in RHBD and TLN Zones – Buildings may be located adjacent to the sidewalk of any street (except west of 124th Avenue NE), if they contain a pedestrian-oriented facade along that street frontage pursuant to the standards in subsection (2) of this section. As part of the Design Review process, required yards, setbacks or other development standards may be modified along the street frontage. Buildings not featuring a pedestrian-oriented facade along a street must provide a building setback of at least 10 feet from any public street (except areas used for pedestrian or vehicular access) landscaped with a combination of trees, shrubs, and groundcover per the requirements of supplemental landscape standards **of KZC ~~95.40(5)(b)95.41.2~~**.

KZC 92.103.f. RHBD East End – Rear Yard Building Placement – Pursuant to KZC [95.40 through KZC 95.45](#), in most cases, commercial uses shall install a required landscaped buffer adjacent to single-family properties. By requesting a modification to these provisions, the property owners may negotiate an agreement to reduce the landscape buffer/setback in a way that can benefit both parties.

Where buildings are sited towards the rear of the property, the applicant must utilize one of the following standards to minimize impacts to adjacent residential areas (see Figure 92.10.C and options below):

- 1) Meet the required landscape buffer pursuant to KZC [95.4095.42](#).

KZC 92.35 Building Material, Color and Detail

- e. Trellises or arbors having an area of at least 100 square feet and planted consistent with the requirements of KZC [95.40\(5\)95.41](#) to achieve at least 30 percent coverage of the trellis or arbor with plant material within three years.

KZC 78.35.2.e. Required Landscaping. The requirements of Chapter [95](#) KZC apply. An SCTF shall satisfy the requirements of Landscape Category A pursuant to **KZC ~~95.40(4)95.42~~**, except that if an SCTF is proposed adjoining a commercial or industrial use or zone, the SCTF must comply **with KZC ~~95.40(5)95.41~~ Supplemental Plantings and ~~(6)(b)95.42.2~~** (Buffering

Standard 2). The landscape buffers shall be placed between the property line and the solid screening fence.

KZC 113.25

Tree Retention	<u>The Tree Retention Plan</u> Standards contained in KZC 95.35 95.30 for Tree Plan III shall apply to development approved under this chapter.
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KZC 162.35.6 Nonconforming Landscaping, Buffers and Paving

- a. See KZC ~~95.40~~95.47 for nonconforming landscaping and buffering requirements.

KZC 115.105.2.d. Exceptions to Outdoor Use, Activity or Storage – The following outdoor uses and activities, when located in commercial and industrial zones, are exempt from the requirements of this section as stated below:

1) Exceptions to subsections (2)(c)(1) through (5) of this section; provided, that a temporary certificate of occupancy from the Building Department is obtained:

a) Outdoor Christmas tree lots and fireworks stands if these uses will not exceed 30 days.

b) Outdoor amusement rides, carnivals and circuses, and parking lot sales which are ancillary to the indoor sale of the same goods and services if these uses will not exceed seven days.

- 2) See KZC ~~95.40~~95.43 for exceptions to subsections (2)(c)(1) and (2)(c)(2) of this section.

CITY OF KIRKLAND

123 FIFTH AVENUE KIRKLAND, WASHINGTON 98033-6189 (425) 828-1257

**DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Interpretation File 91-3
From: Joseph W. Tovar
Date: July 24, 1991
Subject: KZC 95.40 – BONDS – ESTABLISHMENT OF TWO-YEAR
MAINTENANCE AGREEMENT FOR ON-SITE LANDSCAPING

 KZC ~~95.40~~ gives the City the authority to require a bond pursuant to Chapter 175 KZC to ensure compliance with any aspect of the landscaping chapter. The City has been requiring two year landscape maintenance securities to cover required landscaping for all new development. Planners have found that few landscape maintenance securities are called in, and that the paperwork to establish them is substantial. In an effort to streamline permit processing, provide more timely service, and still comply with the code and ensure maintenance of landscaping, a new way of achieving compliance has been developed.

When a project nears occupancy, the applicant and property owner will be required to sign a “Two-Year Landscape Maintenance Agreement – On-Site Landscaping” which will be recorded with King County. An as-built landscape plan will still be required and a site visit will still be performed by the planner prior to releasing the certificate of occupancy. At the end of two years, the planner will again visit the site to determine whether the landscaping has been adequately maintained. If not, and if the planner has difficulty obtaining voluntary compliance, then the case will be subject to civil penalties as authorized by Chapter 170 KZC.

 **Therefore, it is my interpretation that applicants can achieve compliance with KZC ~~95.40~~ by submitting a properly signed and notarized “Two-Year Landscape Maintenance Agreement – On-Site Landscaping” prior to occupancy rather than bonds.**

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 52.12	USE REGULATIONS	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.010	Vehicle Service Station. See Special Regulation 1.	D.R., Chapter 142 KZC.	22,500 sq. ft.	0'	0'	0'	80%	30' above average building elevation.	A	E	See KZC 105.25. 1. May not be more than two vehicle service stations at any intersection. 2. Gas pump islands must be setback at least 20 feet from all property lines. Canopies and covers over gas pump islands may not be closer than 10 feet to any property line. See KZC 115.105, Outdoor Use, Activity and Storage, for further regulations.	
.020	Automotive Service Center See Special Regulation 1.		None	0'	0'	0'					1 per each 250 sq. ft. of gross floor area. See Spec. Reg. 3. 1. This use specifically excludes new or used vehicle sales or rentals. 2. No openings (i.e., doors, windows which open, etc.) shall be permitted in any facade of the building adjoining a residential use. Windows are permitted if they are triple-paned and unable to be opened. 3. Ten (10) percent of the required parking spaces on site must have a minimum dimension of 10 feet wide by 30 feet long for motor home/travel trailer use. 4. Storage of used parts and tires must be conducted entirely within an enclosed structure. See also the section in Chapter 115 entitled "Outdoor Use, Activity and Storage" for additional regulations. 5. Prior to occupancy of the structure, documentation must be provided and stamped by a licensed professional verifying that the expected noise to be emanating from the site adjoining to any residential use complies with the standards set forth in WAC 173-60-040(1) for a Class B source property and a Class A receiving property.	
.030	Retail Establishment providing boat sales, service, or repair. See Special Regulation 1.										See KZC 105.25. 1. Boat rental and used boat sales are allowed as part of this use. 2. Storage of parts must be conducted entirely within an enclosed structure. 3. Outdoor boat parking and storage areas must be buffered as required for a parking area per design regulations, KZC 95.40(7) . See also KZC 115.105, Outdoor Activity and Storage, for further regulations.	
.040	Restaurant or Tavern								D		1 per each 100 sq. ft. of gross floor area. 1. For restaurants with drive-in or drive through facilities: a. These facilities are permitted only if they do not compromise the pedestrian orientation of the development. The location and specific design of the facilities require Planning Official approval. b. Access for drive-through facilities shall be approved by the Public Works Department. Drive-through facilities shall be designed so that vehicles will not block traffic in the right-of-way while waiting in line to be served. c. One outdoor waste receptacle shall be provided for every eight parking stalls. d. Landscape Category B shall apply.	

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 52.17	USE ↓ REGULATIONS ↑	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)		
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure	
				Front	Side	Rear							
.010	Vehicle Service Station See Spec. Reg. 1.	D.R., Chapter 142 KZC.	22,500 sq. ft.	0'	0'	0'	80%	26' above average building elevation.	A	E	See KZC 105.25. 1. May not be more than two vehicle service stations at any intersection. 2. Gas pump islands must be setback at least 20 feet from all property lines. Canopies and covers over gas pump islands may not be closer than 10 feet to any property line. See KZC 115.105, Outdoor Use, Activity and Storage, for further regulations.		
.020	Automotive Service Center See Spec. Reg. 1.			None	0'	0'						0'	1 per each 250 sq. ft. of gross floor area. See Spec. Reg. 3.
.030	Retail Establishment providing boat sales, service, or repair. See Spec. Reg. 1.		See KZC 105.25.	1 per each 100 sq. ft. of gross floor area.	D	1. For restaurants with drive-in or drive-through facilities: a. One outdoor waste receptacle shall be provided for every eight parking stalls. b. Access for drive-through facilities shall be approved by the Public Works Department. Drive-through facilities shall be designed so that vehicles will not block traffic in the right-of-way while waiting in line to be served. c. Landscape Category B shall apply.							
.040	Restaurant or Tavern											See KZC 105.25.	
.060	A Retail Establishment providing entertainment, recreational, or cultural activities		See KZC 105.25.										

EXHIBIT 1
O-4226
Attachment B

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 52.27	USE ↓ REGULATIONS →	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.010	Retail Establishment providing boat sales, service, or repair. See Spec. Reg. 1.	D.R., Chapter 142 KZC.	None	0'	0'	0'	80%	26' above average building elevation.	A	E	See KZC 105.25.	1. Boat rental and used boat sales are allowed as part of this use. 2. Storage of parts must be conducted entirely within an enclosed structure. 3. Outdoor boat parking and storage areas must be buffered as required for a parking area per design regulations, KZC 95.40(7) . See also KZC 115.105, Outdoor Activity and Storage, for further regulations.
.020	Restaurant or Tavern								C		1 per each 100 sq. ft. of gross floor area.	1. Drive-in or drive-through facilities are prohibited.
.040	A Retail Establishment providing entertainment, recreational, or cultural activities										See KZC 105.25.	

95.45

Section 48.15	USE ↓ REGULATIONS ↑	DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS										
		Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
			Front	Side	Rear							
.150	Recycling Center	Within the NE 85th Street Subarea, D.R., Chapter 142 KZC. Otherwise, none.	None	20'	0'	0'	80%	If adjoining a low density zone other than RSX, then 25' above average building elevation. Otherwise, 35' above average building elevation with a maximum of two stories, exclusive of parking levels.	A	C	See KZC 105.25.	1. May deal in metal cans, glass, and paper. Other materials may be recycled if the Planning Director determines that the impacts are no greater than those associated with recycling metal cans, glass, or paper. The individual will have the burden of proof in demonstrating similar impacts. 1. Landscape Category A or B may be required depending on the type of use on the subject property and the impacts associated with the use on the nearby uses.
.160	Public Utility								C See Spec. Reg. 1.	B		
.170	Government Facility Community Facility											
.180	Hazardous Waste Treatment and Storage Facilities	Within the NE 85th Street Subarea, D.R., Chapter 142 KZC. Otherwise, none.	None	30'	0'	0'	90%	35' above average building elevation with a maximum of two stories, exclusive of parking levels. See Spec. Reg. 2.	A	C	1 per each 1,000 sq. ft. of gross floor area.	1. Must comply with the state siting criteria adopted in accordance with RCW 70.105.210. 2. Structure height may be increased above 35 feet in height through a Process IIA, Chapter 150 KZC, if: a. It will not block local or territorial views designated in the Comprehensive Plan; and b. The increased height is not specifically inconsistent with the applicable neighborhood plan provisions of the Comprehensive Plan; and c. The need for an increase in height is directly related to the hazardous waste treatment and/or storage activity; and d. The required yard of any portion of the structure may be increased up to a maximum 95.40 through 95.45 portion of the structure exceeding elevation. The need for additional setback yards will be determined as part of the review of any request to increase structure height.
.190	Vehicle or Boat Repair, Services, Storage, or Washing								E	See KZC 105.25.		



DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 53.06	USE REGULATIONS	Required Review Process	MINIMUMS			MAXIMUMS		Landscaping Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	REGULATIONS	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.010	Vehicle Service Station	D.R., Chapter 142 KZC.	22,500 sq. ft.	20' See Spec. Reg. 1.	15' on each side.	15'	80%	67' above average building	A	E	See KZC 105.25.	<p>95.40 through 95.45</p> <p>(See also General Regulations)</p>
.020	Automotive Service Center See Spec. Reg. 1.		None	10'	0'	0'					1 per each 250 sq. ft. of gross floor area. See Spec. Reg. 1.	<p>95.40 through 95.45</p>
.030	Restaurant or Tavern								B		1 per each 100 sq. ft. of gross floor area.	<p>95.40 through 95.45</p>
.040	Any Retail Establishment other than those specifically listed, limited or prohibited in this zone, selling goods or providing services, including banking and related financial services										1 per each 300 sq. ft. of gross floor area.	<p>95.40 through 95.45</p>



USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 53.12	USE ↓ REGULATIONS ↑	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.010	Vehicle Service Station See Spec. Regs. 1 and 2.	D.R., Chapter 142 KZC.	22,500 sq. ft.	20'	15'	15'	80%	20' above average building elevation.	A	E See Spec. Reg. 6.	See KZC 105.25.	<p>95.40 through 95.45</p> <p>1. No retail floor area shall be permitted for this use.</p> <p>2. Hours of operation and truck deliveries are limited to 8:00 a.m. to 9:00 p.m.</p> <p>3. Gas pump islands must be located at least 20 feet from all property lines.</p> <p>4. See KZC 95.40(6) and (7), required landscaping, for additional regulations.</p> <p>5. The following improvements must be installed:</p> <p>a. Half street improvements including vertical curb, five-foot-wide sidewalk and 4.5-foot-wide landscape strip planted with street trees adjacent to the curb in the following locations:</p> <p>i. Along the south side of NE 90th Street between 120th Avenue NE and the existing sidewalk west of 122nd Avenue NE.</p> <p>ii. Along the south side of NE 90th Street between 122nd Avenue and 123rd Lane NE.</p> <p>iii. Along the east side of 120th Avenue NE between NE 90th Street and the existing sidewalk to the south.</p> <p>b. Crosswalk markings at the intersection of NE 90th Street and 122nd Avenue NE.</p> <p>Minor deviations may be approved by the Public Works Director. If improvements will result in impacts to adjacent wetlands, they must comply with Chapter 90 KZC, Drainage Basins, requirements.</p> <p>c. Basic water quality treatment for the surface water discharge from all the parking lots that serve the commercial use located in RH 1A. The treatment shall meet the specifications of the 1998 King County Surface Water Design Manual, or equivalent approved by the Public Works Department.</p> <p>d. A pedestrian pathway shall be developed and maintained between NE 90th Street and Slater Avenue NE.</p> <p>6. Internally illuminated signs are prohibited on the north and east sides of gas pump islands or canopies.</p>
.020	Accessory parking for retail uses located in the RH 1A zone		None	10' Otherwise 20' adjoining a residential zone	10' on each side	10'		35' above average building elevation.	B	D	N/A	1. No retail floor area shall be permitted for this use.

EXHIBIT 1
O-4226
Attachment B

Section 53.24

Zone
RH 2A, 2B,
2C

USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 53.24	USE ↓ REGULATIONS ↑	Required Review Process	Lot Size	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)
				REQUIRED YARDS (See Ch. 115)			Lot Coverage	Height of Structure				
				Front	Side	Rear						
.010	Vehicle Service Station See Spec. Regs. 1 and 2.	D.R., Chapter 142 KZC.	22,500 sq. ft.	20' See Spec. Reg. 2.	0' See Spec. Reg. 2.	0' See Spec. Reg. 2.	80%	35' above average building elevation.	A	E	See KZC 105.25.	95.40 through 95.45 1. This use is permitted only in RH 2A. 2. Gas pump islands must be set back a minimum of 20 feet from all property lines. Canopies or covers over gas pump islands may not be closer than 10 feet to any property line. Outdoor parking and service areas may not be closer than 10 feet to any property line. 3. See KZC 95.40(6) and (7), required landscaping, for further regulations.
.020	Automotive Service Center See Spec. Reg. 1.		None	10' adjacent to NE 85th St., otherwise 20'.	0'	0'	In RH 2A and RH 2B: 80% In RH 2C: 70%	In RH 2B: 55' above average building elevation. In RH 2A: 67' above average building elevation.			1 per each 250 sq. ft. gross floor area. See Spec. Reg. 2.	95.40 through 95.45 1. This use is permitted only in RH 2A. 2. Ten percent of the required parking spaces on site must have a minimum dimension of 10 feet wide by 30 feet long for motor home/ travel trailer use. 3. Parts and tires must be stored entirely within an enclosed structure. 4. See KZC 95.40(6) and (7), required landscaping, for further regulations.
.030	Restaurant or Tavern										1 per each 100 sq. ft. of gross floor area.	1. This use is permitted in RH 2B only if developed in conjunction with the RH 2A zone. 2. This use is not permitted in RH 2C. 3. For restaurants with drive-in or drive-through facilities: a. One outdoor waste receptacle shall be provided for every eight parking stalls. b. Access for drive-through facilities shall be approved by the Public Works Department. Drive-through facilities shall be designed so that vehicles will not block traffic in the right-of-way while waiting in line to be served.
.040	A Retail Establishment providing entertainment, recreational or cultural activities										See KZC 105.25.	1. This use is permitted in RH 2B only if developed in conjunction with the RH 2A zone. 2. This use is not permitted in RH 2C.

EXHIBIT 1
O-4226
Attachment B

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 53.24	USE ↓ REGULATIONS ↑	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.050	Any Retail Establishment other than those specifically listed, limited or prohibited in this zone, selling goods, or providing services including banking and related financial services	D.R., Chapter 142 KZC.	None	10' adjacent to NE 85th St., otherwise 20'.	0'	0'	In RH 2A and RH 2B: 80% In RH 2C: 70%	In RH 2C: 35' above average building elevation. In RH 2B: 55' above average building elevation. In RH 2A: 67' above average building elevation.	A	E	1 per each 300 sq. ft. of gross floor area. See Spec. Reg. 2.	<ol style="list-style-type: none"> This use is permitted in RH 2B only if developed in conjunction with the RH 2A zone. No retail uses are permitted in RH 2C unless the use is a retail establishment providing the sale, lease, service or repair of automobiles, trucks, boats, motorcycles, recreational vehicles also located in the RH 2A 95.40 through 95.45 For a retail establishment involving the sale, lease, repair or service of automobiles, trucks, boats, motorcycles, recreational vehicles, heavy equipment, and similar vehicles, the following shall apply: <ol style="list-style-type: none"> For the number of required parking stalls see KZC 105.25. Parts must be stored entirely within an enclosed structure. See KZC 95.40(6) and (7), required landscaping, for further regulations. The landscape buffer requirements of Chapter 95 KZC shall apply adjacent to 118th Avenue NE. Ancillary assembly and manufacture of goods on the premises of this use are permitted only if: <ol style="list-style-type: none"> The assembled or manufactured goods are directly related to and are dependent on this use, and are available for purchase and removal from the premises. The outward appearance and impacts of this use with ancillary assembly or manufacturing activities must be no different from other retail uses. A delicatessen, bakery, or other similar use may include, as part of the use, accessory seating if: <ol style="list-style-type: none"> The seating and associated circulation area does not exceed more than 10 percent of the gross floor area of the use; and It can be demonstrated to the City that the floor plan is designed to preclude the seating area from being expanded.



USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 53.34	USE ↓ REGULATIONS ↑	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (General Regulations) 95.40 through 95.45			
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure		
				Front	Side	Rear								
.020	Vehicle Service Station	D.R., Chapter 142 KZC.	Less than 6 acres.	20'	0'	0'	80%	35' above average building elevation.	A	E	See KZC 105.25.	1. Gas pump islands must be set back at least 20 feet from all property lines. Canopies or covers over gas pump islands may not be closer than 10 feet to any property line. Outdoor parking and service areas may not be closer than 10 feet to any property line. 2. See KZC 95.40(6) and (7) , required landscaping, for further regulations.		
.030	Automotive Service Center See Spec. Reg. 1.			10'	0'	0'							1 per each 250 sq. ft. of gross floor area. See Spec. Reg. 1.	1. Ten percent of the required parking spaces on site must have a minimum dimension of 10 feet wide by 30 feet long for motor home/travel trailer use. 2. Parts and tires must be stored entirely within an enclosed structure. 3. See KZC 95.40(6) and (7) , required landscaping, for further regulations.
.040	Restaurant or Tavern			1 per each 100	1. For restaurants with drive-in or drive-through facilities: a. One outdoor waste receptacle shall be provided for every eight parking stalls. b. Access for drive-through facilities shall be approved by the Public Works Department. Drive-through facilities shall be designed so that vehicles will not block traffic in the right-of-way while waiting in line to be served.									
.050	Any Retail Establishment other than those specifically listed, limited or prohibited in this zone, selling goods or providing services, including banking and related financial services.							B			1 per each 300 sq. ft. of gross floor area.	1. Ancillary assembly and manufacture of goods on the premises of this use are permitted only if: a. The assembled or manufactured goods are directly related to and are dependent upon this use, and are available for purchase and removal from the premises. b. The outward appearance and impacts of this use with ancillary assembly or manufacturing activities must be no different from other retail uses. 2. A delicatessen, bakery, or other similar use may include, as part of the use, accessory seating if: a. The seating and associated circulation area does not exceed more than 10 percent of the gross floor area of the use; and b. It can be demonstrated to the City that the floor plan is designed to preclude the seating area from being expanded.		

95.40 through 95.45

95.40 through 95.45

REGULATIONS CONTINUED ON NEXT PAGE

EXHIBIT 1
O-4626
Attachment B

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS												
Section 53.34	USE ↓ REGULATIONS ↑	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.050	Any Retail Establishment other than those specifically listed, limited or prohibited in this zone, selling goods or providing services, including banking and related financial services. (continued)										95.40 through 95.45 CONTINUED FROM PREVIOUS PAGE 3. For a retail establishment involving the sale, lease, repair or service of automobiles, trucks, boats, motorcycles, recreational vehicles, heavy equipment, and similar vehicles, the following shall apply: a. For the number of required parking stalls see KZC 105.25. b. Parts must be stored entirely within an enclosed structure. c. See KZC 95.40(6) and (7), required landscaping, for further regulations.	
.060	Hotel or Motel	D.R., Chapter 142 KZC.	Less than 6 acres.	10'	0'	0'	80%	35' above average building elevation.	B	E	1 per each room. See also Spec. Reg. 2. 1. May include ancillary meeting and convention facilities. 2. Excludes parking requirements for ancillary meeting and convention facilities. Additional parking requirement for these ancillary uses shall be determined on a case-by-case basis.	
.070	A Retail Establishment providing entertainment, recreational or cultural activities									See KZC 105.25.		



USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 53.54	USE REGULATIONS	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.010	Vehicle Service Station See Spec. Regs. 1 and 2.	D.R., Chapter 142 KZC.	22,500 sq. ft.	20' See Spec. Reg. 4.	15' See Spec. Reg. 4.	15' See Spec. Reg. 4.	80%	If adjoining an RS or RSX zone, then 30' above average building elevation. Otherwise, 35' above average building elevation.	A	E	See KZC 105.25.	<p>95.40 through 95.45</p> <p>the subject property abuts NE 85th Street. the RH 5B zone.</p> <ol style="list-style-type: none"> May not be more than two vehicle service stations at any intersection. Gas pump islands must be set back at least 20 feet from all property lines. Canopies or covers over gas pump islands may not be closer than 10 feet to any property line. Outdoor parking and service areas may not be closer than 10 feet to any property line. See KZC 95.40(6) and (7), required landscaping, for further regulations.
.020	Automotive Service Center See Spec. Reg. 1.		None	10' adjacent to NE 85th St., otherwise 20'.	0'	15'					See KZC 105.25.	<p>95.40 through 95.45</p> <ol style="list-style-type: none"> This use is not permitted in the RH 5B zone. This use specifically excludes a retail establishment involving the sale, lease, repair or service of automobiles, trucks, boats, motorcycles, recreational vehicles, heavy equipment, and similar vehicles. No openings (i.e., doors, windows which open, etc.) shall be permitted in any facade of a building adjoining any residential zone. Windows are permitted if they are triple-paned and unable to be opened. Ten percent of the required parking spaces on site must have a minimum dimension of 10 feet wide by 30 feet long for motor home/travel trailer use. Parts and tires must be stored entirely within an enclosed structure. See KZC 95.40(6) and (7), required landscaping, for further regulations.
.030	A Retail Establishment providing entertainment, recreational or cultural activities										See KZC 105.25.	
.040	Restaurant or Tavern See Spec. Regs. 1 and 2.										1 per each 100 sq. ft. of gross floor area.	<ol style="list-style-type: none"> Taverns and restaurants with drive-in or drive-through facilities are not permitted uses in an RH 5B zone. For restaurants with drive-in or drive-through facilities: <ol style="list-style-type: none"> One outdoor waste receptacle shall be provided for every eight parking stalls. Access for drive-through facilities shall be approved by the Public Works Department. Drive-through facilities shall be designed so that vehicles will not block traffic in the right-of-way while waiting line to be served.

EXHIBIT 1
0-4229
Attachment B

USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 53.54	 USE  REGULATIONS	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.050	Any Retail Establishment other than those specifically listed in this zone, selling goods or providing services, including banking and related financial services	D.R., Chapter 142 KZC.	None	10' adjacent to NE 85th St., otherwise 20'.	0'	15'	80%	If adjoining an RS or RSX zone, then 30' above average building elevation. Otherwise, 35' above average building elevation.	A	E	1 per each 300 sq. ft. of gross floor area.	1. Ancillary assembly and manufacture of goods on the premises of this use are permitted only if: <ol style="list-style-type: none"> The assembled or manufactured goods are directly related to and are dependent upon this use, and are available for purchase and removal from the premises. The outward appearance and impacts of this use with ancillary assembly or manufacturing activities must be no different from other retail uses. 2. A delicatessen, bakery, or other similar use may include, as part of the use, accessory seating if: <ol style="list-style-type: none"> The seating and associated circulation area does not exceed more than 10 percent of the gross floor area of the use; and It can be demonstrated to the City that the floor plan is designed to exclude the seating area from being expanded. 3. 95.40 through 95.45 regarding the sale, service or rental of motor or recreation trailers, the following shall apply: <ol style="list-style-type: none"> This use is not permitted in the RH 5B zone; provided, that motorcycle sales, service, or rental is permitted if conducted indoors. For the number of required parking stalls see KZC 105.25. Parts must be stored entirely within an enclosed structure. See KZC 95.40(6) and (7), required landscaping, for further regulations.
.060	Office Use								B	D	If a medical, dental or veterinary office, then 1 per each 200 sq. ft. of gross floor area. Otherwise, 1 per each 300 sq. ft. of gross floor area.	1. The following regulations apply to veterinary offices only: <ol style="list-style-type: none"> May only treat small animals on the subject property. Outside runs and other outside facilities for the animals are not permitted. 2. Ancillary assembly and manufacture of goods on the premises of this use are permitted only if: <ol style="list-style-type: none"> The ancillary assembled or manufactured goods are subordinate and dependent on this use. The outward appearance and impacts of this use with ancillary assembly or manufacturing activities must be no different from other office uses.

USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS												
Section 55.61	USE ↓ REGULATIONS ↓	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARD (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.140	Mini-Day-Care See Spec. Reg. 1.	None	None	20'	0'	0'	80%	35' above average building elevation.	D	B	See KZC 105.25.	<ol style="list-style-type: none"> This use is permitted if accessory to a primary use, and: <ol style="list-style-type: none"> It will not exceed 20 percent of the gross floor area of the building; The use is integrated into the design of the building. A six-foot-high fence is required along the property lines adjacent to the outside play areas. To reduce impacts on nearby residential uses, hours of operation of the use may be limited and parking and passenger loading areas relocated. Structured play areas must be set back from all property lines by five feet. An on-site passenger loading area may be required depending on the number of attendees and the extent of the abutting right-of-way improvements. The location of parking and passenger loading areas shall be designed to reduce impacts on nearby residential uses. May include accessory living facilities for staff persons. These uses are subject to the requirements established by the Department of Social and Health Services (WAC Title 388).
.150	Recycling Center								A	C		<ol style="list-style-type: none"> May deal in metal cans, glass, and paper. Other materials may be recycled if the Planning Director determines that the impacts are no greater than those associated with recycling metal cans, glass, or paper. The individual will have the burden of proof in demonstrating similar impacts.
.160	Public Utility								C See Spec. Reg. 1.	B		<ol style="list-style-type: none"> Landscape Category 95.40 through 95.45 on the type of use on the subject property and the impacts associated with the use on the nearby uses.
.170	Government Facility Community Facility											
.180	Vehicle or Boat Repair, Services, Storage, or Washing								A	E		<ol style="list-style-type: none"> Outdoor vehicle or boat parking or storage areas must be buffered as required for a parking area in KZC 95.40(6) and (7), landscaping regulations. Access from drive-through facilities must be approved by the Public Works Department. Drive-through facilities must be designed so that vehicles will not block traffic in the right-of-way while waiting to be served.
.190	Public Park	Development standards will be determined on case-by-case basis. See Chapter 49 KZC for required review process.										

EXHIBIT 1
Q1226
Attachment B

ORDINANCE NO. 4227

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING CHAPTER 19.36 OF THE KIRKLAND MUNICIPAL CODE REGARDING STREET TREES AND TREES ON CITY PROPERTY.

WHEREAS, pursuant to the State Environmental Policy Act (SEPA), there has accompanied the legislative proposal and recommendation through the entire consideration process, a SEPA Addendum to Existing Environmental Documents or Determination issued by the responsible official pursuant to WAC 197-11-625; and

WHEREAS, in regular public meeting the City Council considered the environmental documents received from the responsible official,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Kirkland as follows:

Section 1. Text Amended: The following specific portions of the text of Chapter 19.36 – Street Trees and Trees on City Property of the Kirkland Municipal Code is amended to read as follows:

As set forth in Attachment A attached to this ordinance and incorporated by reference.

Section 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. This ordinance shall be in full force and effect on April 1, 2010. Pursuant to Section 1.08.017 Kirkland Municipal Code, publication of this ordinance shall be in the summary form attached to the original of this ordinance and by this reference approved by the City Council, as required by law.

PASSED by majority vote of the Kirkland City Council in open meeting this 15th day of December, 2009.

SIGNED IN AUTHENTICATION thereof this 15th day of December, 2009.



Mayor

Attest:

Kathie Anderson
City Clerk

Approved as to Form:

Oliver Anderson
City Attorney

Kirkland Municipal Code

Chapter 19.36
PENALTIES FOR VIOLATIONS - STREET TREES AND
TREES ON CITY PROPERTY

Sections:

- ~~19.36.010 — Purpose.~~
- ~~19.36.020 — Definitions.~~
- ~~19.36.030 — Alteration of street trees without prior approval is prohibited.~~
- ~~19.36.035 — Standards and criteria for approval to remove street tree.~~
- ~~19.36.040 — Removal or alteration of trees in public parks and other city property prohibited.~~
- 19.36.050 — 19.36.010 Civil penalties for violations.
- 19.36.060 — 19.36.020 Issuance of notice of violation.
- 19.36.070 — 19.36.030 Issuance of notice of civil infraction.
- 19.36.080 — 19.36.040 Civil infraction appeal procedures.
- 19.36.090 — 19.36.050 Criminal penalties for willful violations.
- 19.36.110 — 19.36.060 Remedies not exclusive.

~~19.36.010 Purpose.~~

~~The purpose of this chapter is to regulate, preserve and protect street trees, trees in public parks and trees on other city property.~~

~~19.36.020 Definitions.~~

~~Terms used in this title shall have the following meanings:~~

~~(a) — "Hazard tree" is any tree with structural defects, disease, or both, which makes it subject to a high probability of failure in the opinion of a qualified professional retained or approved by the city.~~

~~(b) — "Nuisance tree" is a tree which is causing physical damage to property or has been damaged by past maintenance practices, and for which accepted arboricultural practices cannot correct the problem.~~

~~(c) — "Street tree" is a tree located within the street right-of-way; provided, that if the trunk of the tree straddles the boundary line of the street right-of-way and the abutting property, it shall be considered to be on the abutting property and subject to the provisions of the Kirkland Zoning Code.~~

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

~~Routine maintenance of street trees is the responsibility of the abutting property owner except in the city's central business district (CBD) zones and in any other specific right-of-way that may be identified by the city. Except for routine maintenance, it is unlawful for any person to prune, trim, modify, alter or damage a street tree without the prior approval of the director of public works or his or her designee; provided, that the city and utility crews may perform routine pruning and maintenance of street trees; and provided further, that an abutting property owner may perform routine pruning and maintenance in accordance with any landscape maintenance agreement or contract with the city. An application to prune, trim, modify or alter a street tree shall be granted only if the proposed action will improve the health and appearance of the tree. An application to prune, trim, modify or alter a street tree~~

~~shall not be granted if the sole or primary purpose of the proposed action is view enhancement.~~

~~19.36.035 Standards and criteria for approval to remove street tree.~~

~~An abutting property owner may apply for permission to remove a street tree by filing a written application with the department of public works. An application to remove a street tree shall be reviewed by the director of public works, or his or her designee. The director shall consider the following factors in determining whether to grant or deny the application: (1) whether the tree is a hazard tree or nuisance tree; (2) the location of the tree in the right-of-way; (3) the size and type of tree and whether it constitutes a "significant tree" as defined in the Kirkland Zoning Code; (4) whether the tree is now, or may be in the future, part of the city's plans for the right-of-way; (5) whether the property owner is willing to mitigate the consequences of removal of the tree by planting a new tree or trees in a more suitable location; and (6) any other factor that the director deems relevant or appropriate. Any failure by the applicant or his or her agents to adhere to conditions imposed on tree removal by the city under this chapter shall constitute a violation of this chapter and is subject to enforcement under this chapter.~~

~~19.36.040 Removal or alteration of trees in public parks and other city property prohibited.~~

~~It is unlawful for any person to remove, prune, trim, modify, alter or damage a tree in a public park or on any other city property; provided, that the city may perform routine pruning and maintenance of such trees and take any actions it deems necessary with respect to trees on city property.~~

~~19.36.050-010 Civil penalties for violations.~~

(a) The director of public works or his or her designee shall be responsible for enforcing the provisions of this chapter with respect to street trees. The director of parks and community services or his or her designee shall be responsible for enforcing the provisions of this chapter with respect to city parks and other city property.

(b) When taking enforcement action under this chapter, the city's primary goal, if feasible, shall be full restoration of the area where the violation occurred. Each tree removed, pruned, trimmed, modified, altered or damaged in violation of this chapter shall constitute a separate violation for the purpose of assessing penalties under this chapter. Violations shall be deemed to be continuing in nature until the area where the violations occurred is fully restored to the condition it was in prior to the violations; provided, that the city, in its discretion, may suspend the accrual of daily penalties if the property owner is actively and diligently implementing a city-approved restoration plan. The costs of restoration shall not be more than the appraised value of the significant trees removed, according to the most recent edition of the Guide for Plant Appraisal.

(c) In addition to the costs of restoration, the amount of the monetary penalty per day for violation is as follows:

- (1) First violation: two hundred dollars.
- (2) Second violation: four hundred dollars.
- (3) Third violation: six hundred dollars.

(d) Payment of a monetary penalty under this chapter does not relieve a person of the duty to correct the violation as ordered by the applicable department director. (Ord. 3866 § 1 (part), 2002)

19.36.060-020 Issuance of notice of violation.

If the applicable department director, or his or her designee, determines that any person has violated this chapter, he or she may issue a notice of violation. The notice of violation shall state:

- (a) The name and address of the person to whom the notice of violation is directed;
- (b) The street address or a description of the land sufficient for identifying where the violation occurred;
- (c) A description of the violation and a reference to the provision of this chapter that has been violated;
- (d) A statement of the action required to be taken to correct the violation and a date and time by which the correction is to be completed no less than seven days after issuance of the notice of violation; and
- (e) A statement of the monetary penalty for each day on which the violation continues after the date set for correction.

The city shall serve the notice of violation on the person charged with violating this chapter personally or by certified mail. (Ord. 3866 § 1 (part), 2002)

19.36.070-030 Issuance of notice of civil infraction.

If a violation is not corrected in the time specified in the notice of violation, the city may issue a notice of civil infraction to the person charged with violating this chapter. The notice of civil infraction shall include the following:

- (a) The name and address of the person to whom the notice of civil infraction is directed;
- (b) The street address or a description of the land sufficient for identifying where the violation occurred;
- (c) A description of the violation and a reference to the provision of this chapter that has been violated;
- (d) A statement that the monetary penalty in the amount per day for each violation, as set forth in the notice of violation, is assessed against the person to whom the notice of civil infraction is issued; and
- (e) A statement that the person to whom the notice of civil infraction was directed must complete correction of the violation and may pay the monetary penalty imposed to the city or may appeal the notice of civil infraction as provided in this chapter.

A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless appealed as provided in this chapter. The city shall serve the notice of violation on the person charged with violating this chapter personally or by certified mail. (Ord. 3866 § 1 (part), 2002)

19.36.080-040 Civil infraction appeal procedures.

- (a) A person to whom a notice of civil infraction is directed may appeal the determination that a violation exists or the amount of any monetary penalty to the hearing examiner. A written notice of appeal must be filed with the city within seven calendar days from the date of service of the notice of civil infraction. The office of the hearing examiner shall give notice of the hearing of the appeal no less than seventeen calendar days prior to the hearing date.
- (b) The hearing examiner shall conduct a hearing on the appeal pursuant to the rules of procedure provided by the Administrative Procedure Act, Chapter 34.05 RCW, as well as any procedural rules and guidelines promulgated by the hearing examiner. The city and the

appellant may participate as parties in the proceedings and each may call witnesses. The city shall have the burden of proving by a preponderance of the evidence that a violation has occurred.

(c) The hearing examiner shall determine whether the city has proven by a preponderance of the evidence that a violation has occurred and shall affirm, vacate, suspend or modify the amount of any monetary penalty with or without written conditions. The monetary penalty does not accrue during the pendency of the appeal; provided, that if the hearing examiner finds that the appeal is frivolous or intended solely to delay compliance, he or she may impose a daily monetary penalty from the date of service of the notice of civil infraction. The hearing examiner's decision shall be the city's final administrative ruling. The hearing examiner shall mail a copy of his decision to the appellant by certified mail, postage prepaid, return receipt requested.

(d) The monetary penalty is the personal obligation of the person to whom the notice of civil infraction was directed. Any monetary penalty assessed shall be paid to the city clerk within seven days of issuance of the notice of civil infraction, or, if an appeal was filed, within seven days of the hearing examiner's decision. The city attorney is authorized to collect the monetary penalty by use of appropriate legal remedies, the seeking or granting of which shall not stay or terminate accrual of additional per-day monetary penalties so long as the violation continues. (Ord. 3866 § 1 (part), 2002)

19.36.~~090-050~~ Criminal penalties for willful violations.

Any willful violation of this chapter is a gross misdemeanor punishable by imprisonment for not more than one year, or by a fine of not more than five thousand dollars, or both. The city may also seek criminal restitution for all costs and expenses incurred in replacing or restoring any trees and landscaping that were damaged or removed as a result of the violation. (Ord. 3866 § 1 (part), 2002)

19.36.~~110-060~~ Remedies not exclusive.

The remedies prescribed in this chapter are in addition to all other remedies provided for or authorized by law, including, but not limited to, RCW 64.12.030 which provides for treble damages for unlawful removal of trees. (Ord. 3866 § 1 (part), 2002)

ORDINANCE NO. 4228

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO FEES CHARGED BY THE DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT, ESTABLISHING NEW FEES FOR CERTAIN TREE RELATED PERMITS AND REFLECTING THE CURRENT PUBLISHED ANNUAL CHANGE IN THE SEATTLE CONSUMER PRICE INDEX FOR WAGE EARNERS AND CLERICAL WORKERS.

WHEREAS, the City has had tree regulations in place since 2006, some of which require permits needing review by the Urban Forester and other City staff;

WHEREAS, the City would like to establish new fees for certain tree related permits that are currently not incorporated in other permit fees; and

WHEREAS, the fee schedule shown in the KMC is from 2008 and has been increased administratively.

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

Section 1. Section 5.74.070 of the KMC is hereby repealed.

Section 2. A new Section 5.74.070 of the Kirkland Municipal Code is hereby created to read as follows:

5.74.070 Fees charged by planning department

(a) The schedule below establishes fees charged by the planning department. The entire fee must be paid before the review or processing begins, except as otherwise specified.

FEE TYPE	FEE AMOUNT
Preliminary Project Review Presubmittal Meeting, Intergrated Development Plan, and/or Predesign Conference <i>Note: Fee subtracted from the application fee if the application is submitted within six months of the date of the preliminary project review meeting date. Credit does not apply to subsequent meetings related to the same project.</i>	\$504.00
Planning Official Decisions	
Accessory Dwelling Unit <i>(not required if reviewed concurrently with a building permit)</i>	\$414.00
Personal Wireless Service Facility Planning Official Decision	\$8,352.00
Personal Wireless Service Facility Subsequent or Minor Modification	\$828.00
Parking Modification	\$525.00
Sensitive Area Planning Official Decision	\$2,071.00

FEE TYPE	FEE AMOUNT
Administrative Design Review If application involves new gross floor area (new buildings or additions to existing buildings)	\$2,071.00
No new gross floor area	\$0.00
Master Sign Plan Approval Modification	\$828.00
Off-Site Directional Sign Approval Modification	\$525.00
Design Review Approval Modification	\$1,049.00
Design Review Approval Extension	\$414.00
Historic Residence Alteration	\$828.00
Rooftop Appurtenance Modification	\$828.00
Multiple Private or ROW Tree Removal Permit	\$200.00
Forest Management Plan	\$300.00
<i>Planning Director Decisions</i>	
Temporary Use Permit	\$212.00
Variance Exception	\$1,049.00
Off-Site Directional Sign	\$1,049.00
Master Sign Plan	\$2,927.00
Short Plat or Subdivision Approval Modification	\$828.00
Process I Approval Modification	\$828.00
Process IIA, IIB or III Approval Modification	\$1,049.00
Lot Line Alteration	\$1,049.00
Binding Site Plan	\$2,085.00
Multifamily Housing Property Tax Exemption Conditional Certificate	\$1,049.00
Multifamily Housing Property Tax Exemption Contract Amendment	\$525.00
Multifamily Housing Property Tax Exemption Conditional Certificate Extension	\$525.00
Noise Variance	\$525.00
<i>Process I Review</i>	
Short Subdivision Base Fee	\$4,141.00
Fee per lot	\$966.00
Innovative Short Subdivision Fixed Fee	\$6,764.00
Fee per lot	\$966.00
Substantial Development Permit General Moorage Facility	\$10,436.00
Other Shoreline Improvements	\$4,473.00
Personal Wireless Service Facility Process I Review	\$10,436.00
Other Process I Review Residential Base Fee	\$4,141.00
Fee per new residential unit	\$483.00
Nonresidential Base Fee	\$4,141.00
Fee per square foot new GFA	\$0.29
Mixed Use Base Fee	\$4,141.00
Fee per new unit	\$483.00
Fee per square foot new GFA	\$0.29
Home Occupation	\$1,062.00
Historic Residence Designation	\$1,062.00

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FEE TYPE	FEE AMOUNT
<i>Process IIA Review</i>	
Preliminary Subdivision	
Fixed Fee	\$8,711.00
Fee per lot	\$1,049.00
Innovative Preliminary Subdivision	
Fixed Fee	\$10,795.00
Fee per lot	\$1,049.00
Personal Wireless Service Facility Process IIA Review	\$20,210.00
Other IIA	
Base Fee	\$7,303.00
Fee per new residential unit	\$414.00
Fee per sq. ft. new non-residential GFA	\$0.41
<i>Process IIB & Process III Review</i>	
Subdivision Vacation or Alteration	\$8,945.00
Historic Landmark Overlay or Equestrian Overlay	\$1,049.00
Personal Wireless Service Facility Process IIB Review	\$29,156.00
Other IIB or III	
Residential (including Short Subdivisions reviewed through Process IIB per KMC 22.28.050)	
Base Fee	\$11,265.00
Fee per new residential unit	\$414.00
Fee per sq. ft. new non-residential GFA	\$0.41
<i>Design Board Review</i>	
Design Board Concept Review	\$1,427.00
Design Board Design Response Review	
Base Fee	\$4,371.00
Fee per new unit	\$201.00
Fee per sq. ft. new GFA	\$0.20
<i>State Environmental Policy Act (SEPA)</i>	
Review of Environmental Checklist	\$552.00
Base Fee	
Estimated Number of PM Peak Trips	
Less than 20 trips	\$903.00
21-50 trips	\$1,805.00
51-200 trips	\$3,610.00
Greater than 200 trips	\$7,221.00
Applications involving sensitive areas (streams and/or wetlands only)	\$552.00
Preparation of Environmental Impact Statement (EIS)	
* The cost of preparing an EIS is the sole responsibility of the applicant. Kirkland Ordinance #2473, as amended, establishes the procedures that the City will use to charge for preparation and distribution of a draft and final EIS. The applicant is required to deposit with the City an amount not less than \$5,000 to provide for the City's cost of review and processing an EIS. If the anticipated cost exceeds \$5,000, the City may require the applicant to deposit enough money to cover the anticipated cost.	

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FEE TYPE	FEE AMOUNT
Miscellaneous	
Appeals and Challenges	
Appeals	\$207.00
Challenges	\$207.00
Note: No Fee for appeals of Notice of Civil Infraction or Order to Cease Activity	
Sidewalk Café Permits	
Fixed Fee	\$654.00
Fee per sq. ft. of cafe area	\$0.73
Street Vacation	
Fixed Fee	\$8352.00
Fee per sq. ft. of street	\$0.41
Final Subdivision	
Fixed Fee	\$2071.00
Fee per lot	\$207.00
Review of Concurrence Application - Estimated	
Number of PM Peak Trips	
Less than 20 trips	\$531.00
21-50 trips	\$743.00
51-200 trips	\$1,487.00
Greater than 200 trips	\$1,911.00
Fees for Comprehensive Plan and Zoning Text Amendment Requests	
Request for property specific map change	
Initial request	
If request is authorized by City Council for review	\$319.00
	\$319.00
Request for city-wide or neighborhood-wide policy change	
	No charge

General Notes:
<p>1. Fee Reduction for Applications Processed Together: When two or more applications are processed together, the full amount will be charged for the application with the highest fee. The fee for the other application(s) will be calculated at 50% of the listed amount.</p>
<p>2. Projects with greater than 50 dwelling units or 50,000 sq. ft. non-residential GFA: The per unit and per sq. ft. fee for all units above 50 and all GFA above 50,000 sq. ft. shall be reduced by one half.</p>
<p>3. Note for Sensitive Areas permits:</p> <p>a. In cases where technical expertise is required, the Planning Official may require the applicant to fund such studies.</p> <p>b. Voluntary wetland restoration & voluntary stream rehabilitation projects are not subject to fees.</p>
<p>4. Construction of affordable housing units pursuant to Chapter 112 of the Kirkland Zoning Code: The fee per new unit and fee per square foot new GFA shall be waived for the bonus or additional units or floor area being developed.</p>
<p>5. Note for Historic Residence permits: An additional fee shall be required for consulting services in connection with designation and alteration of historic residences.</p>

(b) The director is authorized to interpret the provisions of this chapter and may issue rules for its administration. This includes, but is not limited to, correcting errors and omissions and adjusting fees to match the scope of the project. The fees established here will be reviewed annually, and, effective January 1st of each year, may be

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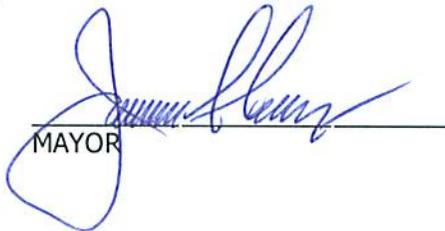
administratively increased or decreased, by an adjustment to reflect the current published annual change in the Seattle Consumer Price Index for Wage Earners and Clerical Workers as needed in order to maintain the cost recovery objectives established by the city council.

Section 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 4. This ordinance shall be in full force and effect on April 1, 2010. The current fees charged by the Planning Department shall remain in effect until April 1, 2010. Pursuant to Section 1.08.017 Kirkland Municipal Code, publication of this ordinance shall be in the summary form attached to the original of this ordinance and by this reference approved by the City Council, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this 15th day of December, 2009.

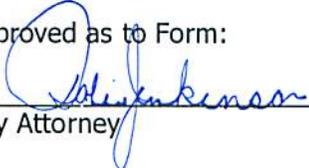
Signed in authentication thereof this 15th day of December, 2009.


MAYOR

Attest:

City Clerk

Approved as to Form:



City Attorney

RESOLUTION 2010-2

A RESOLUTION OF THE HOUGHTON COMMUNITY COUNCIL APPROVING ORDINANCE NO. 4226 ADOPTED BY THE KIRKLAND CITY COUNCIL ON DECEMBER 15, 2009, ADOPTING ZONING CODE AMENDMENTS RELATED TO TREE AND LANDSCAPING AMENDMENTS (FILE NO. ZON08-00016).

WHEREAS, the Houghton Community Council has received from the Kirkland City Council Ordinance No. 4226, adopting amendments to the Kirkland Zoning Code; and

WHEREAS, the subject matter of this ordinance, pursuant to Ordinance 2001, is subject to the disapproval jurisdiction of the Houghton Community Council and shall become effective within the Houghton Community Municipal Corporation only upon approval by the Houghton Community Council or the failure of said Community Council to disapprove this ordinance within 60 days of the date of the passage of this ordinance; and

WHEREAS, on October 26, 2009 the Houghton Community Council held a public courtesy hearing on the proposed amendments and, following the close of the public courtesy hearing, recommended that the City Council approve the amendments with certain changes; and

WHEREAS, the subject of this ordinance was reviewed and discussed by the Houghton Community Council at three study sessions between June 2009 and September 2009; and

WHEREAS, the Houghton Community Council elects to exercise its jurisdiction with respect to Ordinance 4226 by approving the ordinance;

NOW, THEREFORE, be it resolved that Ordinance 4226 is hereby approved and shall be effective within the Houghton Community Municipal Corporation.

PASSED by majority vote of the Houghton Community Council in regular, open meeting this ____ day of _____, 2010.

SIGNED IN AUTHENTICATION thereof this ____ day of _____, 2010.

Chair, Houghton Community Council

City Clerk

RESOLUTION 2010-2

A RESOLUTION OF THE HOUGHTON COMMUNITY COUNCIL DISAPPROVING ORDINANCE NO. 4226 ADOPTED BY THE KIRKLAND CITY COUNCIL ON DECEMBER 15, 2009, ADOPTING ZONING CODE AMENDMENTS RELATED TO TREE AND LANDSCAPING AMENDMENTS (FILE NO. ZON08-00016).

WHEREAS, the Houghton Community Council has received from the Kirkland City Council Ordinance No. 4226, adopting amendments to the Kirkland Zoning Code; and

WHEREAS, the subject matter of this ordinance, pursuant to Ordinance 2001, is subject to the disapproval jurisdiction of the Houghton Community Council and shall become effective within the Houghton Community Municipal Corporation only upon approval by the Houghton Community Council or the failure of said Community Council to disapprove this ordinance within 60 days of the date of the passage of this ordinance; and

WHEREAS, on October 26, 2009 the Houghton Community Council held a public courtesy hearing on the proposed amendments and, following the close of the public courtesy hearing, recommended that the City Council approve the amendments with certain changes; and

WHEREAS, the subject of this ordinance was reviewed and discussed by the Houghton Community Council at three study sessions between June 2009 and September 2009; and

WHEREAS, the Houghton Community Council elects to exercise its jurisdiction with respect to Ordinance 4226 by disapproving the ordinance;

NOW, THEREFORE, be it resolved that Ordinance 4226 is hereby disapproved and shall not be effective within the Houghton Community Municipal Corporation.

PASSED by majority vote of the Houghton Community Council in regular, open meeting this ____ day of _____, 2010.

SIGNED IN AUTHENTICATION thereof this ____ day of _____, 2010.

Chair, Houghton Community Council

City Clerk