CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225
www.ci.kirkland.wa.us

MEMORANDUM

To: Planning Commission

From: Jon Regala, Senior Planner
Deborah Powers, Urban Forester
Paul Stewart, AICP, Deputy Planning Director

Date: September 24, 2009

Subject: TREE REGULATIONS UPDATE – STUDY SESSION
FILE ZON08-00016

RECOMMENDATION

The Planning Commission should review and provide feedback to staff on the following items in preparation for the public hearing scheduled for November 12, 2009:

- Proposed revisions to Kirkland Zoning Code (KZC) *Chapter 95 – Tree Management and Required Landscaping*;
- Proposed code language in regards to Integrated Development Plans; and
- Options regarding the minimum number of trees to remain on a lot/parcel.

BACKGROUND DISCUSSION

In November 2005, the City Council adopted Chapter 95 of the Kirkland Zoning Code (KZC) that established new regulations, standards, and procedures for tree management and required landscaping. The code went into effect in 2006. At the time of the adoption of the tree amendments, the City Council requested that a two-year status report of the regulations be prepared and brought back for Council review.

Staff presented a report to the Council at the September 2, 2008 City Council study session which included three "tiers" of amendments for Council's consideration: minor, moderate or major changes to the adopted regulations. *"Minor amendments"* would improve the current system but would not change the basic approach. *"Moderate changes in policy direction"* would result in some fairly substantive changes to the regulations. The third tier "*major policy questions*" would fundamentally alter the regulations and implement new policy directions.

At the conclusion of the study session, the City Council directed staff to pursue studying changes identified as being in the 'minor' and 'moderate' categories. Changes to the KZC are subject to the requirements found in KZC Chapter 135 – Amendments to the Text of the Zoning Code and KZC Chapter 160 - Process IV.

The proposed *minor amendments* were discussed at the Planning Commission's June 11, 2009 meeting and the Houghton Community Council's June 22, 2009 meeting. The proposed moderate amendments were discussed at the Planning Commission's August 13, 2009 meeting

and the Houghton Community Council's August 10, 2009 meeting. The meeting packets for those meetings are available on the City's Planning Department website: http://www.ci.kirkland.wa.us/depart/Planning.htm. Based on feedback from these meetings, staff has prepared information for review and discussion in preparation for the November 12, 2009 public hearing.

REQUESTED MINOR CHANGES – Chapter 95 Reorganization and Consolidation

The City Council asked staff to simplify and reformat KZC Chapter 95. Although the 2006 revisions were a vast improvement over previous code language, the chapter could be reorganized to make it more user-friendly. Some definitions could be improved and a table format could be utilized where appropriate.

Based on the recommendations from the Planning Commission and Houghton Community Council, staff began simplifying and reorganizing KZC Chapter 95. Staff determined where redundancies occurred and therefore was able to consolidate similar-type sections from different parts of the chapter and from the Municipal Code Title 19. Also, definitions were clarified and code sections were relocated within the chapter to flow more logically. The result is a draft version of KZC Chapter 95 (see Attachment 1).

The draft version in Attachment 1 shows the 'tracked changes'. Highlighted text indentifies sections of the code that were relocated to a new location within Chapter 95. Underlines and strikethroughs shown in red depict additions or deletions to existing text. A clean version of the chapter can be found in Attachment 2 where all of the changes have been incorporated. Staff would like feedback from the Planning Commission in regards to the direction staff has taken to reorganize and consolidate the chapter.

Other changes were made to the chapter that was more substantive in nature. Staff would also like feedback in regards to the following changes:

- Categorized tree removal as *tree removal not associated development* and *tree retention associated with development*
- Require a permit for tree removal not associated with development to better track tree removal, review for compliance with regulations, and respond to public inquiries
- The new *tree removal not associated with development* section combines the requirements for the two trees per year removal allowance, reference to the new Shoreline regulations, nuisance and hazard tree removal allowances, and the previous Tree Plan IV and V requirements
- Tree retention associated with development has been reorganized into a chart and contains all of what was previously referred to as the Tree Plan I, II and III requirements
- Tree Plans associated with development activities have been changed to require a single *Tree Retention Plan*
- Tree types 1, 2, and 3 have been changed to the term: *Tree Retention Value – High, Moderate, or Low*

REQUESTED MODERATE CHANGES

At the previous study session, the Planning Commission reviewed and discussed the proposed Integrated Development Plan (IDP) as it relates to tree retention on short plats and subdivisions. A goal of an IDP is to identify trees to be retained on the subject property early in the project's design phase. All trees identified for removal at this early stage may then be

removed with the grading permit rather than in several phases. The trees identified to be retained at the short plat/subdivision stage are required to be retained at each subsequent development stage when utilizing this process.

The benefits of this approach for a developer are a quicker review time and cost savings for removing trees all at once. For the general public, there would be a better understanding regarding tree removal and clear expectations of trees to remain once construction activities have begun.

The Planning Commission agreed that the three short plat/subdivision review processes proposed under the IDP could result in better tree retention and that all three options should be made available to applicants. In summary, the three procedural options are (using terminology from Kurt Latimore's study):

Pre-submittal: This option provides a developer with predictable tree retention requirements, and allows all tree removals to occur at the grading permit stage. The IDP, which includes very detailed information, is submitted at the pre-submittal meeting stage of a project, including tree plan information, utility locations, access point, and building footprints. This option moves the tree review to a point very early in the development process, prior to an applicant submitting for a permit. Trees identified for retention at this very early stage must be retained throughout the development. As mentioned in the draft IDP report, this is the best time to take advantage of modifications to development standards in order to save trees worthy of retention.

Accelerated: This is similar to the *Pre-submittal* process described above, except that the IDP is submitted at the time of short plant/subdivision permit application rather than the pre-submittal meeting stage. Tree plan review will then occur concurrently with the review of the short plant/subdivision permit.

Both *the Pre-submittal* and *Accelerated processes* will require the applicant to submit a tree preservation and maintenance agreement prior to final plat.

Progressive: This option reviews tree retention with each step of the development process (i.e. short plat, grading permit, and single-family building permit) and is representative of how tree plans are currently processed in the City. This typically results in minimal tree removal occurring with the grading permit, then subsequent tree removals with the building permits. It offers the most flexibility to a developer that is not ready to submit a very detailed development plan. Additional review time is needed at each stage for tree plan review.

The existing Tree Plan III requirements are consistent with the *Pre-submittal* and *Accelerated* IDP processes described above since all trees identified for retention at the short plat or subdivision stage of the project are required to remain throughout life of the project and should apply to subsequent grading and single-family permits. Therefore, no changes are required to the existing code.

Since the current code, does not allow for the *Progressive* IDP process option described above, new code language will need to be created. In addition, the Planning Commission, wanted staff to explore code language that would allow subsequent changes to the tree retention plan *only* when necessary. Therefore, staff would like feedback from the Commission on the following code language drafted to allow for a *Progressive* IDP option (renamed as 'Phased Review' below) and to allow modifications to an IDP only when necessary. Staff would also like to get feedback from the Planning Commission as to the appropriate process for review of the subsequent modification requests. Below is the draft language:

KZC 95.30.5 - Additional Tree Retention Plan Standards for Short Plat and Subdivisions

A. Phased Review.

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

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

B. Modifications to Tree Retention Plan for Short Plats and Subdivisions.

1) Modification Prior to any Tree Removal. If a Tree Retention Plan was approved during the short plat or subdivision review process which established the location of all proposed improvements, including the building footprint, utilities, and access, and no tree removal has occurred, the Planning Official may approve a modification to the approved Tree Retention Plan provided that the following requirements are met:

a) A new Tree Retention Plan shall be required at each phase of the project as more information about the location of the proposed improvements is known subject to all of the requirements in KZC 95.30. Tree removal shall be limited to those affected areas.

b) The Planning Official shall not approve or deny a modification pursuant to this section without first providing notice of the modification request consistent with the noticing requirements for the short plat and providing opportunity for comments for consideration by the Planning Official.

c) The Planning Official shall use mailing labels provided by the applicant, or, at the discretion of the Planning Official, by the City. Said comment period shall not be less than seven calendar days

d) The fee for processing a modification request shall be as established by City ordinance.

2) Modification after any Tree Removal. Any modification where tree removal has already occurred based on a Tree Retention Plan that established building footprint(s), access, and utilities as part of an approved short plat or subdivision approval process and which results in the removal of trees greater than what was approved in the original Tree

Retention Plan, may be approved by the Hearing Examiner based on the following criteria:

a) The modification is consistent with the tree density and replanting requirements in KZC 95;

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

c) The modification does not result in removal of more than 50% of the trees to be retained and will not, in any substantial way, change the proposed development or violate any requirement of this chapter;

d) The modification is necessary because of special circumstances regarding the size, shape, topography, or other physical limitations of the subject property relative to the location of proposed improvements on the subject property;

e) There is no practicable or feasible alternative development proposal that results in the least amount of additional tree removal; and

3) Modification either before or after any tree removal. At the discretion of the Planning Official, the Planning Official may approve modifications to the approved Tree Retention Plans which are minor and do not result in a significant change to the approved Plan consistent with all provisions of this chapter.

ADDITIONAL PLANNING COMMISSION TOPIC

Should the minimum number of trees to remain on a lot/parcel (when trees being removed are not associated with development) be relative to the size of the subject property?

With the 2006 amendments, in order to slow tree canopy loss, tree removal not associated with development activity was reduced to two significant trees per year for lots smaller than one acre. At a minimum, two trees are required to remain on the subject property. A concern raised at previous Planning Commission meetings is that the regulations currently require a minimum of two trees per lot *regardless* of lot size. The Planning Commission expressed that while this may be okay on smaller lots, requiring two trees to remain on larger properties 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.

Several options that address this issue are presented below for comment by the Planning Commission.

Option 1.

Tree Density - Currently, 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. However, the regulations currently do not tie general tree removal on single-family lots (no associated with development activity) to the above tree density requirements.

For tree removal not associated with development, the regulations currently allow removal of two trees per year until the last two trees remain. If the one or both of the last two trees are removed due to the trees being a hazard or nuisance, a one for one replacement is required.

This option would require that the minimum number of trees to should remain on a parcel/lot be based on the tree density requirements found in KZC 95.35.5.a. Staff would like feedback from the Planning Commission as to whether or not the minimum number of trees required per lot should be related to the existing tree density formula.

The following is an excerpt from the Zoning Code regarding the City's tree density requirement.

> *KZC 95.35.5.a. Minimum Tree Density Requirement Established. The required minimum tree density is 30 tree credits per acre for development requiring a Tree Plan I – Major and Tree Plan III. For individual lots in a short subdivision or subdivision with an approved Tree Plan III, the tree density shall be calculated based on the entire short plat or subdivision. The tree density may consist of existing trees pursuant to the priority established in subsection (4)(a)(1) of this section, or supplemental trees or a combination of existing and supplemental trees pursuant to subsection (5)(c) of this section. Existing trees transplanted to an area on the same site shall not count toward the required density unless approved by the Urban Forester based on transplant specifications provided by a qualified professional that will ensure a good probability for survival.*
>
> *b. Tree Density Calculation. For the purpose of calculating required minimum tree density, City right-of-way, and areas to be dedicated as City right-of-way shall be excluded from the area used for calculation of tree density.*
>
> *Tree density calculation for existing individual trees:*
>
> *1) Diameter breast height (DBH) of the tree shall be measured in inches.*
>
> *2) The tree credit value that corresponds with DBH shall be found in Table 95.35.1.*

Table 95.35.1

Tree Density for Existing Significant Trees

(Credits per minimum diameter – DBH)

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

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

Below is a chart which shows the required tree density credits based on several different lot sizes applying the tree density formula. The chart helps understand how many tree credits are required based on various lot sizes.

Lot Size (sq. ft.)	**Tree Density Credits Required**
5,000	4
7,200	5
8,500	6
12,500	9
25,000	18
35,000	25

To get a sense of how the tree density formula would be applied in different situations, several scenarios have been provided below based on a 12,500 square foot lot. A 12,500 square foot lot is required to have a minimum tree density of 9 tree credits based on the tree density formula. For this example, the subject property has five trees. The size and associated tree credits are shown in the chart below.

Tree No.	**Tree Size (dbh)**	**Tree Credits**
1	6″	1
2	6″	1
3	12″	2
4	20″	6
5	30″	11
	TOTAL	21

Scenario 1: The property owner is requesting to remove the 20" (tree #4) and the 30" (tree #5) tree based on the two trees per year removal allowance.

The removal of trees #4 and #5 will result in the property having only four tree credits dropping the property below the required tree density credit requirement of nine tree credits. The request would have to be denied unless it is modified to remove only one tree (either tree #4 or #5, not both), or it can be shown that the trees are both a hazard or nuisance tree. If both trees are removed due to a hazard or nuisance, the property owner would be required to plant one tree for each tree credit required in order to meet the tree density. Since each tree planted counts as one tree credit a total five new trees will be required to be planted in order to meet the minimum tree density of nine tree credits.

Scenario 2: The property owner proposes to remove both 6" trees. In addition, the owner would like to remove the 12" and 20" tree since they are hazard trees and has a supporting arborist report. Assuming that the tree removal request is approved, there would only be the one remaining tree – the 30" tree worth 11 tree credits. Since the remaining tree credits is greater than the nine tree credits required, no new trees would be required to be planted, however, only one tree will remain on the subject property.

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-sized properties 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. Therefore a 10,000 square foot lot will need to contain four significant trees while a 30,000 square foot lot will need to contain 12 significant trees.

A concern about the existing regulation and the approach proposed in Option 2, is that they maintain a standard for tree retention inconsistent with the standard applied to property being developed.

Option 3.

No Change - A third option is to keep the code as is until additional information is obtained. In the future, staff would like to explore the relationship between tree density and different land use requirements and how they relate to our canopy goal similar to other jurisdictions such as Seattle. In doing so, our tree retention and tree replacement regulations could become more canopy goal based and be applied to any tree removal scenarios. Staff could also use this data to determine the appropriate number of replacement trees needed in order meet tree density requirements.

QUESTIONNAIRE

A questionnaire, to help understand the thoughts of stakeholders in regards to the City's tree regulations, was emailed to three email list serv groups on September 9, 2009 (see Attachment 3): the Tree Regulation Update list serv, the Developer's Forum list serv, and the Kirkland Neighborhood E-bulletin list serv. A total of 145 responses were received as of September 14, 2009. Due to the large number of responses, all responses will be posted online on the Planning Commission web page for the September 24, 2009 meeting:

http://www.ci.kirkland.wa.us/depart/Planning/Planning_Commission.htm

Responses to question #16 of the questionnaire, dealing with general comments and/or suggestions has been consolidated and can be found in Attachment 4.

ATTACHMENTS

1. Draft Chapter 95 with Tracked Changes
2. Draft Chapter 95 without Tracked Changes
3. Tree Questionnaire
4. Tree Questionnaire – Responses to Question #16

☐ - Moved from within KZC Chapter 95

☐ - Moved from KMC Title 19

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

*** Please note that all code section references within the chapter and/or references to the new Tree Retention Plan terminology have not been fully updated**

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. A goal is to achieve 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;

    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);

b. Preserve and enhance the City of Kirkland's environmental, economic, and community character with mature landscapes;

c. Promote site planning, building, and development practices that work to avoid removal or destruction of trees and vegetation, that avoid unnecessary disturbance to the City's natural vegetation, and that provide landscaping to buffer the effects of built and paved areas;

d. Mitigate the consequences of required tree removal in land development through on- and off-site tree replacement with the goals of halting net loss and enhancing Kirkland's tree canopy to achieve an overall healthy tree canopy cover of 40 percent City-wide over time;

e. Encourage tree retention efforts by providing flexibility with respect to certain other development requirements;

f. Implement the goals and objectives of the City's Comprehensive Plan;

g. Implement the goals and objectives of the State Environmental Policy Act (SEPA); and

h. Manage trees and other vegetation in a manner consistent with the City's Natural Resource Management Plan.

i. ~~Regulate, p~~Preserve and protect street trees, trees in public parks and trees on other city property.

95.10 Definitions

The following definitions shall apply throughout this chapter unless the context clearly indicates otherwise. Definitions that apply throughout this code are also located in Chapter 5 KZC.

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

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

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

Diameter at Breast Height (DBH) – The diameter or thickness of a tree trunk measured at 4.5 feet from the ground.

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

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

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

Hazard Tree - A hazard tree must meet the following criteria:

1. The tree must have a combination of structural defects and/or disease which makes it subject to a high probability of failure and is in proximity to moderate-high frequency targets~~of persons or property~~; and

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

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

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

Nuisance Tree - A nuisance tree must meet the following criteria:

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

2. Tree has been damaged by past maintenance practices, that cannot be corrected with proper arboricultural practices; or

3. The problems associated with the tree must be such that they cannot be corrected by any other reasonable practice. Including but not limited to the following:

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

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

Public Works Official – Designee of the Public Works Director

Qualified Professional – An individual with relevant education and training in arboriculture or urban forestry, having at least one of the following credentials:~~.~~

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

Where development is proposed, a qualified professional is expected to have experience working directly with the protection of trees during construction, have experience with the likelihood of tree survival after construction, and be able to~~A qualified professional must possess~~

~~the ability to perform tree risk assessments and~~ prescribe appropriate measures necessary for the preservation of trees during land development.

Significant Tree – A tree that is at least six inches in diameter at breast height (DBH).

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

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

Site Perimeter – The area of the subject property that is 10 feet from the property line.

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

Street Tree - A tree located within the ~~street~~ public right-of-way; provided, that if the trunk of the tree straddles the boundary line of the ~~street~~ public 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~~this chapter.

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

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

Tree Retention Value - Based on the tree retention plan information submitted by the applicant and the Planning Official's evaluation of the trees ~~and~~ relative to the proposed development on the subject property, the Planning Official will designate each tree as having one of the following tree retention values:

1. ~~Type 1~~High, a viable tree, located within required yards and/or required landscape areas ~~Tree retention efforts shall be directed to the following trees if they are~~ determined to be healthy and windfirm by a qualified professional, and provided the trees can be safely retained when pursuing alternatives to development standards in subsections (4)(a)(2) and (4)(a)(3) of this section that meets at least one of the criteria set forth ~~in subsection (4)(a)(1)(b) of this section~~below;

    a. Landmark trees;

    b. Specimen trees;

    c. Tree groves and associated vegetation that are to be set aside as preserved groves pursuant to KZC 95.50(3);

    d. Trees on slopes of at least 10 percent; or

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

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

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

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

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

Windfirm – A condition of a tree in which it can withstand moderate storm winds.

95.20 Exemptions

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

~~2~~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 permit. The party removing the tree will contact the City within seven days of removal to provide evidence of threat for approval of exemption. If the Planning Official determines that the emergency tree removal was not warranted, he or she may require that the party obtain a permit and/or require that replacement trees and vegetation be replanted as mitigation.

~~3~~2. Utility Management. 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.

~~4~~3. Commercial Nurseries or Tree Farms. A nursery or tree farm owner may remove trees that are being grown to be sold as Christmas or landscape trees.

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

95.21 Tree Pruning

1. Approval Required to Prune Street Trees. ~~Routine maintenance of street trees~~It is the responsibility of ~~the abutting~~a property owner to maintain street trees abutting their property. When maintaining street trees, an abutting property owner shall apply for permission to prune, trim, modify or alter a street tree by filing a written application with the City. An application to prune, trim, modify or alter a street tree shall be granted by the Public Works Official 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.~~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~~ ~~t~~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. (Ord. 3891 § 2, 2003; Ord. 3866 § 1 (part), 2002)~~

2. Tree Pruning on Private Property. ~~Topping or~~ A permit is not required to ~~pruning~~ prune trees on private property to the extent defined by tree removal in KZC 95.10~~,~~. Tree topping is not allowed within the City of Kirkland. If a required tree smaller than six inches in diameter is topped, it must be replaced pursuant to the standards in KZC 95.55(8). If a tree six inches or larger in diameter is topped, the owner must have a qualified professional develop and ~~carry out~~implement a five-year restoration pruning ~~schedule~~program.

95.23 Tree Removal – Not Associated with Development Activity

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

2. Permit Required

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

3. Tree Removal Application Form

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

a. A site plan showing the approximate location of significant trees, their size (DBH) and their species, along with the location of structures, driveways, access ways and easements.

b. For required replacement trees, a planting plan showing location, size and species of the new trees in accordance to standards set forth in subsection (5)(c) of this section.

4. Tree Removal Application Procedure and Appeals

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

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

5. Tree Removal Allowances

Any private property owner of developed property may remove up to two significant viable trees, except for the last two significant viable trees, from their property within a 12-month period upon approval of a tree removal permit; ~~provided,~~provided that there is no current application for development activity for the site and the applicable regulations in subsections (4)(a) through (4)(c) below have been met. Removal of nuisance or hazard trees does not count toward the tree removal limit if the nuisance or hazard is supported by a report prepared by a qualified professional and approved by the City. For every significant tree that is removed, the City encourages the planting of a tree that is appropriate to the site.~~. ; and provided further, that the tree(s) are not:~~ Below are additional requirements for tree removal.

a. 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.

b. Removal of Hazard or Nuisance Trees

Any private property owner may remove significant trees which are a hazard or nuisance from developed or undeveloped property upon approval of a tree removal permit; provided that there is no current application for development activity for the site. In

addition, significant trees which are only a hazard or nuisance may be removed when they were originally required to be retained by a special regulation contained in Chapters 15 through 60 KZC, are located in a critical area or its buffer, is a street tree, and/or were designated on an approved Tree Retention Plan to be retained pursuant to KZC 95.35 and 95.50; provided that the applicable regulations in subsection (4)(b)(1) through (4)(b)(2) below have been met.

~~Additional Applicant Requirements.~~If the nuisance or hazard condition is not obvious ~~An~~ an arborist report explaining how the tree(s) meet the definition of a nuisance or hazard tree is required. ~~fit the criteria in subsection (4)(b) or (4)(c) of this section if removal is based on nuisance or hazard and the nuisance or hazard condition is not obvious~~. If the removal request is for one or both of the last two trees, even if a nuisance or hazard, a one-for-one replacement is required as set forth in subsection (5)(c)(2) of this section. Below are additional requirements for hazard or nuisance trees when they are:

1) In easements dedicated to ensure the protection of vegetation; or in critical areas, or critical area buffers. A planting plan is required to mitigate the removal of the hazard or nuisance tree. ~~If a tree is considered a nuisance or hazard in a critical area or its buffer, t~~The priority action is to create a "snag" or wildlife tree with the subject tree. If creation of a snag is not feasible, then the felled tree shall be left in place unless the Planning Official permits its removal in writing.

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

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

2) Street trees. If the removal request is for street trees, the Public Works Official may consider whether the tree(s) ~~is~~ are now, or may be in the future, part of the City's plans for the right-of-way. The City shall require a one-for-one tree replacement in a suitable location. ~~4. 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. (Ord. 3891 § 3, 2003)~~

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

c. Forest Management Plan

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

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

b) ~~-~~Identification of trees to be removed, including reasons for their removal and a description of low impact removal techniques pursuant to subsection (4)(e) of this section;

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

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

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

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

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

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

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

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

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

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

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

95.25 ~~Alternative Compliance~~Sustainable Site Development

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

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

95.30 Tree Retention~~, Protection and Density~~ Associated with Development

1. Introduction.

The intent of this section is to successfully retain ~~desirable~~ all viable trees on developing and re-developing sites and to maintain and enhance the tree canopy of Kirkland. To that end, the City requires approval of a tree retention plan ~~tree permit~~ in conjunction with all development permits resulting in site disturbance and with any proposed tree removal on developed sites not exempted by KZC 95.20.

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

The City's objective is to retain as many viable trees as possible on a developing site while still allowing the development proposal to move forward in a timely manner. This section includes provisions that allow development standards to be modified in order to retain viable significant trees.

The requirement to meet a minimum tree density applies to new single-family and duplex developments and major redevelopments, and new residential subdivisions and short subdivisions. If such a site falls below the minimum density with existing trees, supplemental planting is required. A tree density for existing trees to be retained is calculated to see if new trees are required in order to meet the minimum density for the entire site. Supplemental tree location priority is set as well as minimum size of supplemental trees to meet the density.

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

2. Tree Retention Plan Review Procedure

If the proposed development of the subject property requires approval through a building permit, land surface modification permit, and/or demolition permit; or Design Review, Process I, IIA, IIB, or III, described in Chapters 142, 145, 150, 152 and 155 KZC, respectively, the Tree Retention Plan will be considered as part of that process.

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

3. Tree Retention Plan Required

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

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

4. Tree Retention Plan Components

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

a. Tree Inventory:

1) A~~a~~ numbering system of all existing significant trees on the subject property (with corresponding tags on trees); inventory also to include significant trees on adjacent property with driplines extending over the subject property line;

2) Limits of disturbance (LOD) ~~Measured driplines~~of all existing significant trees (including approximate LOD of offsite trees with overhanging driplines);

3) ~~s~~Size (DBH);~~, species and~~

4) Tree status (removed or retained) ~~based on criteria in subsection (2)(c) of this section for all significant trees~~;

5) Brief ~~G~~general health or condition rating of these trees (i.e.: poor, fair, good, excellent, etc.);

6) Tree type or species~~, approximate trunk location,~~ ; and

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

b. Site plan:

1) Location of all proposed improvements, including building footprint, access, and utilities with applicable setbacks, buffers and required landscape areas clearly identified. If a short plat or subdivision is being proposed and the location of all proposed improvements cannot be established, a phased tree retention plan review is required as described in KZC 95.30.5.a;

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

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

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

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

6) Tree status (removed or retained) based on criteria in subsection 3.b of this section for all significant trees. This can be noted by an 'X' or by ghosting out;

7) ~~Final plan showing r~~Retained trees and proposed locations of any supplemental trees and any required trees in order to meet tree density or minimum number of trees as outlined in subsections (2)(b)(1)(d) and (2)(b)(1)(e) of this section.

c. Tree Assessment to contain:

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

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 individual trees);

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

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

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

6) For development applications, a discussion of timing and installation of tree protection measures that must include fencing and be in accordance with the tree protection standards as outlined in subsection (6) of this section~~.~~; and

7) The suggested location and species of supplemental trees to be used when required. The report shall include planting and maintenance specifications pursuant to KZC 95.45 and 95.50.

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

TREE RETENTION PLAN

Development Activity Required Components	Minor [(1)(3)] - Single-Family, Duplex (includes detached units), and related demolition and land surface modification applications	Major [(2)(3)] Single-Family, Duplex, (includes detached 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, and related demolition and land surface modification applications (see KZC 95.30.6.a - Phased Review for additional

				standards)
TREE INVENTORY AS DESCRIBED IN KZC 95.35.4.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	
TREE ASSESSMENT REQUIREMENTS IN KZC 95.35.2.C SHALL BE PREPARED BY A QUALIFIED PROFESSIONAL AND SHALL APPLY TO:				
Significant trees within required yards or within 10 feet of any side property line		X		
Significant trees potentially impacted by proposed development activity as determined by the Planning Official			X	
Proposed removal of trees with a high tree retention value in required landscaping areas			X	
All significant trees				X
TREE RETENTION STANDARDS				
Applicant is encouraged to retain viable trees	X(4)			
Retain and protect trees with a high tree retention value to the maximum extent possible		X(4)	X(4)	X(4)
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) Applicable when new development, redevelopment, or development in which the total square footage of the proposed improvements is ~~more~~ less than 50 percent of the total square footage of the existing improvements on the subject property

(2) Applicable when new development, redevelopment, or development in which the total square footage of the proposed improvements is more than 50 percent of the total square footage of the existing improvements on the subject property

(3) For lots ~~from~~ created through a short subdivision, subdivision, or Planned Unit Development with an approved Tree Retention Plan ~~III~~, ~~the tree information shall be transferred over and~~ the applicant must comply with the ~~applicable~~ Tree Retention Plan approved with the short subdivision, subdivision, or Planned Unit Development ~~III requirements~~unless subsection (5)(a) below applies.

(4) To retain trees with a high tree retention value~~Type 1 trees in required yards~~, the applicant shall pursue, where feasible, applicable variations in the development standards of this code as outlined ~~in subsections (4)(a)(2) and (4)(a)(3)~~KZC 95.32 of this ~~section~~chapter.

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

a. Phased Review.

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

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

b. Modifications to Tree Retention Plan for Short Plats and Subdivisions.

1) Modification Prior to any Tree Removal. If a Tree Retention Plan was approved during the short plat or subdivision review process which established the location of all proposed improvements, including the building footprint, utilities, and access, and no tree removal has occurred, the Planning Official may approve a modification to the approved Tree Retention Plan provided that the following requirements are met:

a) A new Tree Retention Plan shall be required at each phase of the project as more information about the location of the proposed improvements is known subject to all of the requirements in KZC 95.30. Tree removal shall be limited to those affected areas.

b) The Planning Official shall not approve or deny a modification pursuant to this section without first providing notice of the modification request to the owners and residents of each adjoining property and providing opportunity for comment.

c) The Planning Official shall use mailing labels provided by the applicant, or, at the discretion of the Planning Official, by the City. Said comment period shall not be less than seven calendar days

d) The fee for processing a modification request shall be as established by City ordinance.

2) Modification after any Tree Removal. Any modification where tree removal has already occurred based on a Tree Retention Plan that established building footprint(s), access, and utilities as part of an approved short plat or subdivision approval process and which results in the removal of trees greater than what was approved in the original Tree Retention Plan, may be approved by the Hearing Examiner based on the following criteria:

a) The modification is consistent with the tree density and replanting requirements in KZC 95;

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

c) The modification does not result in removal of more than 50% of the trees to be retained and will not, in any substantial way, change the proposed development or violate any requirement of this chapter;

d) The modification is necessary because of special circumstances regarding the size, shape, topography, or other physical limitations of the subject property relative to the location of proposed improvements on the subject property;

e) There is no practicable or feasible alternative development proposal that results in the least amount of additional tree removal; and

3) Any modification, that does not involve the removal of trees greater than what was originally approved, shall be reviewed and decided upon by the Planning Official based on the provisions of this chapter.

95.32 - Incentives and Variations to Development Standards

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

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

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

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

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

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

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

4. Stormwater. Requirements pertaining to stormwater may be varied if approved by the Public Works Official under KMC 15.52.060.

5. Additional Variations. In addition to the variations described above and the minimum tree density requirements in KZC 95.33 below, the Planning Official is authorized to require site plan alterations to retain ~~Type 1~~ trees with a high retention value. Such alterations include minor adjustments to the location of building footprints, adjustments to the location of driveways and access ways, or adjustment to the location of walkways, easements or utilities. The Planning Official and the applicant shall work in good faith to find reasonable solutions.

95.33 - Tree Density Requirement

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

1. Tree Density Calculation. For the purpose of calculating required minimum tree density, City Parks, City right-of-way, and areas to be dedicated as City right-of-way shall be excluded from the area used for calculation of tree density.

   Tree density calculation for existing individual trees:

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

   b. The tree credit value that corresponds with DBH shall be found in Table 95.~~35~~33.1.

Table 95.~~35~~33.1

Tree Density for Existing Significant Trees

(Credits per minimum diameter – DBH)

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

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

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

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

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

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

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

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

      4) Site perimeter.

      5) On individual residential building lots.

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

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

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

95.34 - Tree Protection during Development Activity

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Grade.

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

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

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

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

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

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

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

95.40 Required Landscaping

1. User Guide. Chapters 15 through 60 KZC containing the use zone charts assign a landscaping category to each use in each zone. This category is either "A," "B," "C," "D," or

"E." If you do not know which landscaping category applies to the subject property, you should consult the appropriate use zone chart.

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

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

a. Various use zone charts, in Chapters 15 through 60 KZC, establish additional or special buffering requirements for some uses in some zones.

b. Chapter 85 KZC, Geologically Hazardous Areas, addresses the retention of vegetation on steep slopes.

c. Chapter 90 KZC, Drainage Basins, addresses vegetation within sensitive areas and sensitive area buffers.

d. Chapter 110 KZC and Chapter 19.36 KMC address vegetation within rights-of-way, except for the I-405, SR-520, and Burlington Northern rights-of-way.

e. KZC 115.135, Sight Distance at Intersections, which may limit the placement of landscaping in some areas.

f. Chapter 22 KMC addresses trees in subdivisions.

2. Use of Significant Existing Vegetation.

a. General. The applicant shall apply subsection KZC 95.35(4) to retain existing trees and vegetation in areas subject to the landscaping standards of this section. The Planning Official shall give substantial weight to the retained trees and vegetation when determining the applicant's compliance with this section.

b. Supplement. The City may require the applicant to plant trees, shrubs, and groundcover according to the requirements of this section to supplement the existing vegetation in order to provide a buffer at least as effective as the required buffer.

c. Protection Techniques. The applicant shall use the protection techniques described in KZC 95.35(6) to ensure the protection of significant existing vegetation.

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

95.41~~5.~~ Supplemental Plantings.

1. General. The applicant shall provide the supplemental landscaping specified in subsection (5)(b) of this section in any area of the subject property that:

a. Is not covered with a building, vehicle circulation area or other improvement; and

b. Is not a critical area, critical area buffer, or in an area to be planted with required landscaping; and

c. Is not committed to and being used for some specific purpose.

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

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

b. One tree for each 1,000 square feet of area to be landscaped. At the time of planting, deciduous trees must be at least two inches in caliper and coniferous trees must be at least five feet in height.

c. If a development requires approval through Process I, IIA, IIB or III as described in Chapters 145, 150, 152 and 155 KZC, respectively, the City may require additional vegetation to be planted along a building facade if:

1) The building facade is more than 25 feet high or more than 50 feet long; or

2) Additional landscaping is necessary to provide a visual break in the facade.

d. In RHBD varieties of rose shrubs or ground cover along with other plant materials shall be included in the on-site landscaping.

e. If development is subject to Design Review as described in Chapter 142, the City will review plant choice and specific plant location as part of the Design Review approval. The City may also require or permit modification to the required plant size as part of Design Review approval.

~~4.~~94.42 Minimum Land Use Buffer Requirements.

The applicant shall comply with the provisions specified in the following chart and with all other applicable provisions of this chapter. Land use buffer requirements may apply to the subject property, depending on what permitted use exists on the adjoining property or, if no 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 95.40(6)(a) (Buffering Standard 1)	Must comply with KZC 95.40(6)(a) (Buffering Standard 1)	Must comply with KZC 95.40(6)(b) (Buffering Standard 2)	
B		Must comply with KZC 95.40(6)(a) (Buffering Standard 1)	Must comply with KZC 95.40(6)(a) (Buffering Standard 1)		
C		Must comply with KZC 95.40(6)(a) (Buffering Standard 1)	Must comply with KZC 95.40(6)(b) (Buffering Standard 2)		
D		Must comply with KZC 95.40(6)(b) (Buffering Standard 2)			
E					
Footnotes:		*If the adjoining property is zoned Central Business District, Juanita Business District, North Rose Hill Business District, Rose Hill Business District, Totem Center or is located in TL 5, KZC 95.40(6) does not apply.			

~~1. Land Use Buffering Standards. The~~ This chart ~~in subsection (4) of this section~~ establishes which buffering standard applies in a particular case. The following subsections establish the specific requirement for each standard:

1. For standard 1, the applicant shall provide a 15-foot-wide landscaped strip with a six-foot-high solid screening fence or wall. Except for public utilities, the fence or wall must be placed on the outside edge of the land use buffer or on the property line when adjacent to private property. For public utilities, the fence or wall may be placed either on the outside or inside edge of the landscaping strip. A fence or wall is not required when the land use buffer is adjacent and parallel to a public right-of-way that is improved for vehicular use. See KZC 115.40 for additional fence standards. The land use buffer must be planted as follows:

    a. Trees planted at the rate of one tree per 20 linear feet of land use buffer, with deciduous trees of two and one-half inch caliper, minimum, and/or coniferous trees eight feet in height, minimum. At least 70 percent of trees shall be evergreen. The trees shall be distributed evenly throughout the buffer, spaced no more than 20 feet apart on center.

b. Large shrubs or a mix of shrubs planted to attain coverage of at least 60 percent of the land use buffer area within two years, planted at the following sizes and spacing, depending on type:

1) Low shrub – (mature size under three feet tall), one- or two-gallon pot or balled and burlapped equivalent);

2) Medium shrub – (mature size from three to six feet tall), two- or three-gallon pot or balled and burlapped equivalent);

3) Large shrub – (mature size over six feet tall), five-gallon pot or balled and burlapped equivalent).

c. Living ground covers planted from either four-inch pot with 12-inch spacing or one-gallon pot with 18-inch spacing to cover within two years 60 percent of the land use buffer not needed for viability of the shrubs or trees.

2. For standard 2, the applicant shall provide a five-foot-wide landscaped strip with a six-foot-high solid screening fence or wall. Except for public utilities, the fence or wall must be placed on the outside edge of the land use buffer or on the property line when adjacent to private property. For public utilities, the fence or wall may be placed either on the outside or inside edge of the landscaping strip. A fence or wall is not required when the land use buffer is adjacent and parallel to a public right-of-way that is improved for vehicular use. See KZC 115.40 for additional fence standards. The landscaped strip must be planted as follows:

a. One row of trees planted no more than 10 feet apart on center along the entire length of the buffer, with deciduous trees of two inch caliper, minimum, and/or coniferous trees at least six feet in height, minimum. At least 50 percent of the required trees shall be evergreen.

b. Living ground covers planted from either four-inch pot with 12-inch spacing or one-gallon pot with 18-inch spacing to cover within two years 60 percent of the land use buffer not needed for viability of the trees.

3. Plant Standards. All plant materials used shall meet the most recent American Association of Nurserymen Standards for nursery stock: ANSI Z60.1.

4. Location of the Land Use Buffer. The applicant shall provide the required buffer along the entire common border between the subject property and the adjoining property.

5. Multiple Buffering Requirement. If the subject property borders more than one adjoining property along the same property line, the applicant shall provide a gradual transition between different land use buffers. This transition must occur totally within the area which has the less stringent buffering requirement. The specific design of the transition must be approved by the City.

6. Adjoining Property Containing Several Uses. If the adjoining property contains several permitted uses, the applicant may provide the least stringent land use buffer required for any of these uses.

7. Subject Property Containing Several Uses. If the subject property contains more than one use, the applicant shall comply with the land use buffering requirement that pertains to the use within the most stringent landscaping category that abuts the property to be buffered.

8. Subject Property Containing School. If the subject property is occupied by a school, land use buffers are not required along property lines adjacent to a street.

9. Encroachment into Land Use Buffer. Typical incidental extensions of structures such as chimneys, bay windows, greenhouse windows, cornices, eaves, awnings, and canopies may be permitted in land use buffers as set forth in KZC 115.115(3)(d); provided, that:

   a. Buffer planting standards are met; and

   b. Required plantings will be able to attain full size and form typical to their species.

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

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

1. That portion of an outdoor use, activity, or storage area which abuts another outdoor use, activity, or storage area which is located on property zoned for commercial or industrial use.

2. Outdoor use, activity, and storage areas which are located adjacent to a fence or structure which is a minimum of six feet above finished grade; and do not extend outward from the fence or structure more than five feet; provided, that the total horizontal dimensions of these areas shall not exceed 50 percent of the length of the facade or fence (see Plate 11).

3. If there is an improved path or sidewalk in front of the outdoor storage area, the outdoor use, activity or storage area may extend beyond five feet if a clearly defined walking path at least three feet in width is maintained and there is adequate pedestrian access to and from the primary use. The total horizontal dimension of these areas shall not exceed 50 percent of the length of the facade of the structure or fence (see Plate 11).

4. Outdoor dining areas.

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

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

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

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

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

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

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

   a. At least one deciduous tree, two inches in caliper or a coniferous tree five feet in height.

   b. Groundcover shall be selected and planted to achieve 60 percent coverage within two years.

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

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

6. 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 95.40.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 95.40.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, or in combination with the following. In the RHBD Regional Center 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) If the street is a pedestrian-oriented street, the wall may also include a continuous trellis or grillwork, at least five feet in height above the ground, placed on top of or in front of the wall and planted with climbing vines. The trellis or grillwork may be constructed of masonry, steel, cast iron and/or wood.

2) If the wall abuts a pedestrian-oriented street, the requirements of this subsection may be fulfilled by providing pedestrian weather protection along at least 80 percent of the frontage of the subject property.

e. If development is subject to Design Review as described in Chapter 142 KZC, the City will review plant choice and specific plant location as part of the Design Review approval. The City may also require or permit modification to the required plant size as part of Design Review approval.

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

Perimeter Parking Lot Landscaping

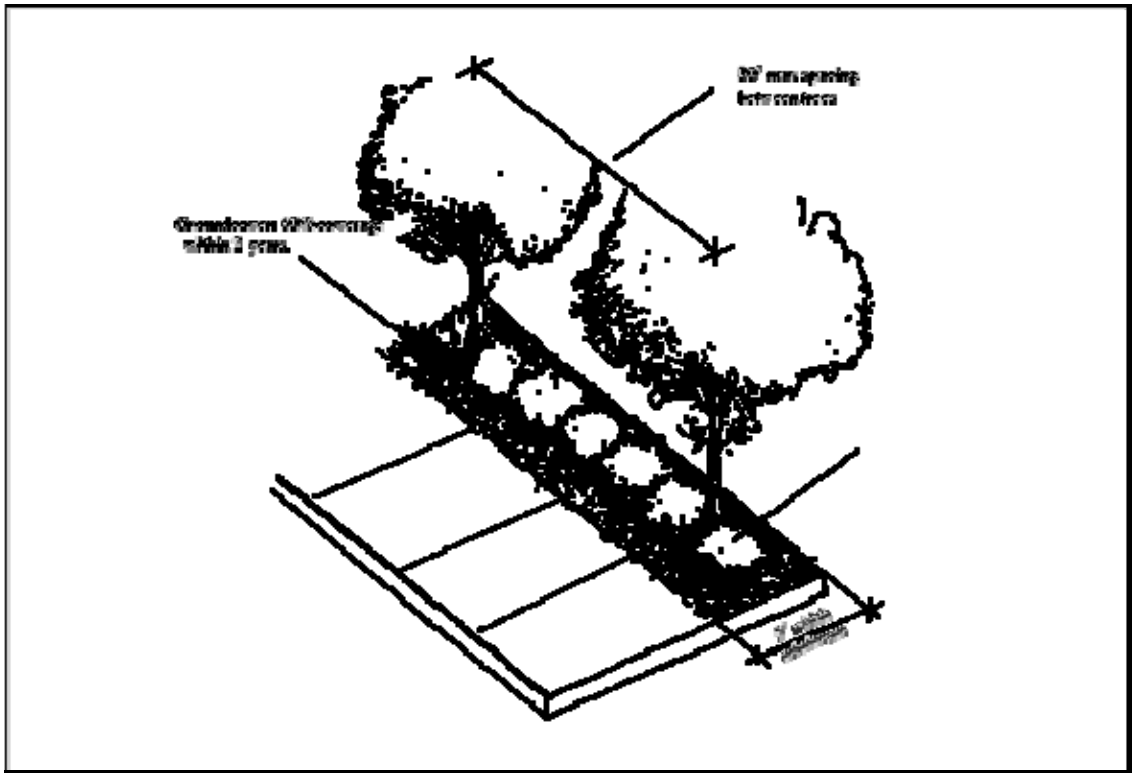


FIGURE 95.40.A

Perimeter Parking – Examples of Various Screen Wall Designs

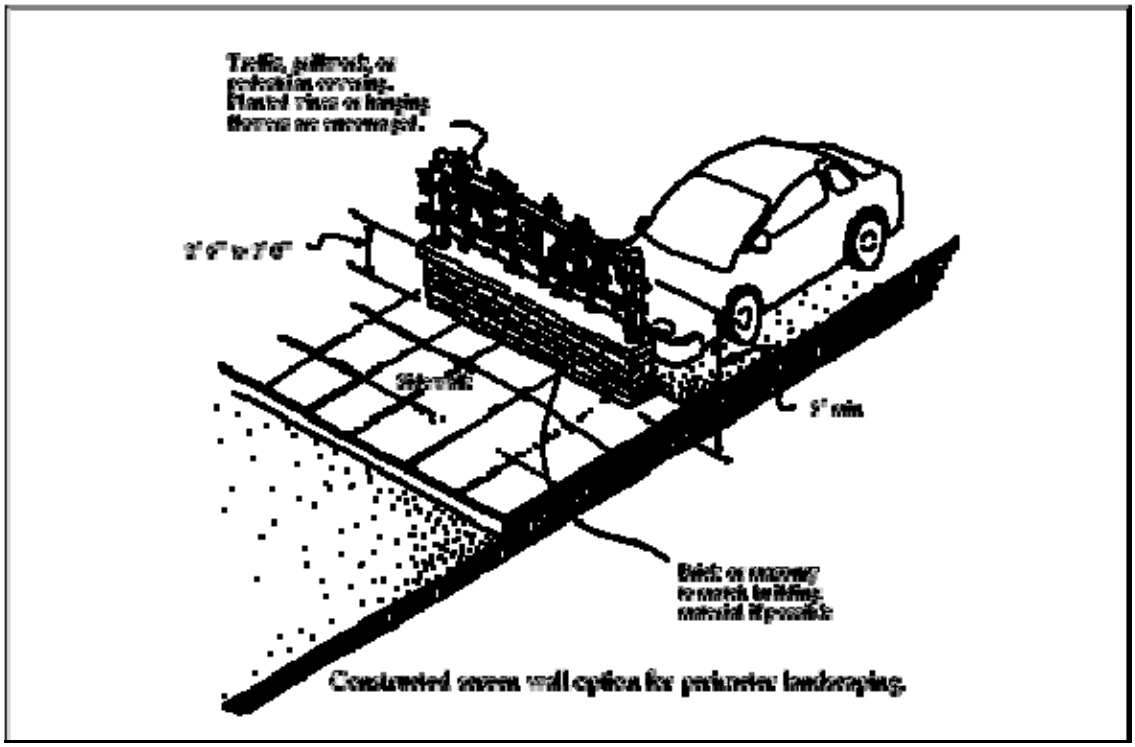


FIGURE 95.40.B

Perimeter Parking – Examples of Various Screen Wall Designs

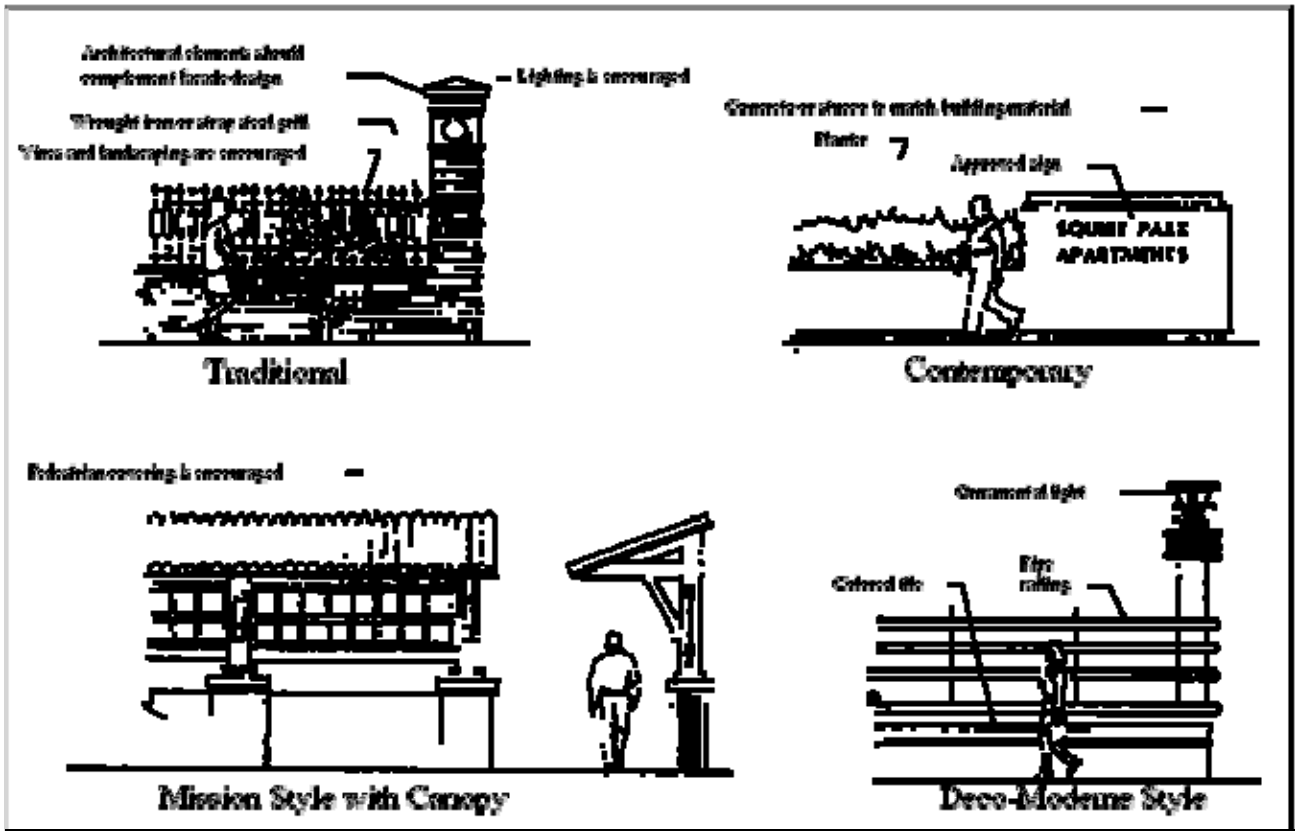


FIGURE 95.40.C

95.46~~c.~~ Modifications to~~of~~ 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. 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

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

2.~~1)~~ ~~Authority to Grant and Duration.~~Modifications to General Landscaping Requirements

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

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

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

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

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

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

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

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

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

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

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

95.47~~8~~ Nonconforming Landscaping and Buffers.

1. The landscaping requirements of subsections (5) and (7) of this section must be brought into conformance as much as is feasible, based on available land area, in either of the following situations:

a. An increase of at least 10 percent in gross floor area of any structure; or

b. An alteration to any structure, the cost of which exceeds 50 percent of the replacement cost of the structure.

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

a. An increase in gross floor area of any structure (the requirement to provide conforming buffers applies only where new gross floor area impacts adjoining property); or

b. A change in use on the subject property and the new use requires larger buffers than the former use.

95.~~45~~ 50 Installation Standards for Required Plantings

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

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

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

~~2~~1. Compliance. It is the applicant's responsibility to show that the proposed landscaping complies with the regulations of this chapter.

~~3~~2. Timing. All landscaping shall be installed prior to the issuance of a certificate of occupancy, except that the installation of any required tree or landscaping may be deferred during the summer months to the next planting season, but never for more than six months. Deferred installation shall be secured with a performance bond pursuant to Chapter 175 KZC prior to the issuance of a certificate of occupancy.

~~4~~3. Grading. Berms shall not exceed a slope of two horizontal feet to one vertical foot (2:1).

5~~.~~4 Soil Specifications. Soils in planting areas shall have adequate porosity to allow root growth. Soils which have been compacted to a density greater than one and three-tenths grams per cubic centimeters shall be loosened to increase aeration to a minimum depth of 24 inches or to the depth of the largest plant root ball, whichever is greater. Imported topsoils shall be tilled into existing soils to prevent a distinct soil interface from forming. After soil

preparation is completed, motorized vehicles shall be kept off to prevent excessive compaction and underground pipe damage. The organic content of soils in any landscape area shall be as necessary to provide adequate nutrient and moisture-retention levels for the establishment of plantings. See subsection (8) of this section for mulch requirements.

~~6~~5. Plant Selection.

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

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

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

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

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

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

~~7~~6. Fertilization. All fertilizer applications to turf or trees and shrubs shall follow Washington State University, National Arborist Association or other accepted agronomic or horticultural standards.

~~8~~7. Irrigation. The intent of this standard is to ensure that plants will survive the critical establishment period when they are most vulnerable due to lack of watering. All required plantings must provide an irrigation system, using either Option 1, 2, or 3 or a combination of those options. For each option irrigation shall be designed to conserve water by using the best practical management techniques available. These techniques may include, but not be limited to: drip irrigation to minimize evaporation loss, moisture sensors to prevent irrigation during rainy periods, automatic controllers to insure proper duration of watering, sprinkler head selection and spacing designed to minimize overspray, and separate zones for turf and shrubs and for full sun exposure and shady areas to meet watering needs of different sections of the landscape.

Exceptions, as approved by the Planning Official, to the irrigation requirement may be approved xeriscape (i.e., low water usage plantings), plantings approved for low impact development techniques, established indigenous plant material, or landscapes where natural

appearance is acceptable or desirable to the City. However, those exceptions will require temporary irrigation (Option 2 and/or 3) until established.

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

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

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

~~9~~8. Drainage. All landscapes shall have adequate drainage, either through natural percolation or through an installed drainage system. A percolation rate of one-half inch of water per hour is acceptable.

~~10~~9. Mulch.

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

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

~~11~~10. Protection. All required landscaped areas, particularly trees and shrubs, must be protected from potential damage by adjacent uses and development, including parking and storage areas. Protective devices such as bollards, wheel stops, trunk guards, root guards, etc., may be required in some situations.

~~12~~11. Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Plants intended to mitigate for the loss of natural resource values are subject to the following requirements in addition to the other requirements of KZC 95.45. Where these requirements conflict with other requirements of this chapter, these requirements take precedence. Refer to Chapters 85 and 90 KZC for additional requirements for these areas.

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

b. Installation. Plant materials must be supported only when necessary due to extreme winds at the planting site. Where support is necessary, stakes, guy wires, or other measures must be removed as soon as the plant can support itself, usually after the first growing season. All fertilizer applications to turf or trees and shrubs shall follow

Washington State University, National Arborist Association or other accepted agronomic or horticultural standards.

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

95.~~50~~ 51 Tree and Landscape Maintenance Requirements

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

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

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

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

   b. Any existing tree or other existing vegetation designated for preservation ~~on a Tree Plan I – Major, a Tree Plan II, or a Tree Plan III~~in a Tree Retention Plan shall be maintained for a period of five years following issuance of the certificate of occupancy for the individual lot or development. After five years, all trees on the property are subject to KZC 95.20 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, Required Landscaping.

3. Maintenance of Preserved Grove. Any applicant who has a grove of trees identified for preservation on an approved tree plan pursuant to KZC 95.35(4)(a)(1)(b) 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). 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.

95.52 Prohibited Vegetation

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

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

95.55 Enforcement and Penalties

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

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

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

For code enforcement provisions regarding street trees and trees located on City property see Kirkland Municipal Code Chapter 19.36.

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

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

5. Stop Work Order. If a violation of this chapter or an approved T~~t~~ree Retention ~~p~~Plan occurs on property on which work is taking place pursuant to a City of Kirkland development or building permit, the Building Official may suspend some or all of the work as appropriate through issuance of a stop work order. The Building Official shall remove the stop work order when the City determines that the violation has been corrected or when the City has reached an agreement with the violator regarding rectification of the violation. Any stop work order issued under this section may be appealed using the procedures set forth in Chapter 21.06 KMC.

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

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

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

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

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

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

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

Note: Section 95.55 continues on page 636.23.

7. Civil Penalty.

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

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

c. The amount of the penalty shall be assessed in accordance with Table 95.55.1. The Planning Official may elect not to seek penalties if he or she determines that the circumstances do not warrant imposition of civil penalties in addition to restoration.

Table 95.55.1 – Penalties

Types of Violations	Allowable Fines per Violation
1. Removal of tree(s) approved to be removed, but prior to final tree plan approval or issuance of a City tree removal permit	$100.00 per tree
2. Removal or damage of tree(s) that are or would be shown to be retained on an approved tree plan or any other violation of approved tree protection plan	$1,000 per tree
3. Removal of tree(s) without applying for or obtaining a required City permit	$1,000 per tree

8. Tree Restoration.

a. Violators of this chapter or of a permit issued thereunder shall be responsible for restoring unlawfully damaged areas in conformance with a plan, approved by the Planning Official, which provides for repair of any environmental and property damage, and restoration of the site; and which results in a site condition that, to the greatest extent practical, equals the site condition that would have existed in the absence of the violation(s). In cases where the violator intentionally or knowingly violated this chapter or has committed previous violations of this chapter, restoration costs may be based on the City-appraised tree value of the subject trees in which the violation occurred, utilizing the industry standard trunk formula method in the current edition of Guide for Plant Appraisal. If diameter of removed tree is unknown, determination of the diameter size shall be made by the Planning Official by comparing size of stump and species to

similar trees in similar growing conditions. The amount of costs above the approved restoration plan will be paid into the City forestry account.

b. Restoration Plan Standards. The restoration plan shall be in accordance to the following standards:

1) The number of trees required to be planted is equal to the number of tree credits of illegally removed trees according to Table 95.35.1.

2) The minimum size for a tree planted for restoration is 12-foot-tall conifer and three-inch caliper deciduous or broadleaf evergreen tree. The City may approve smaller restoration tree sizes at a higher restoration ratio, provided the site has capacity for the additional trees and the results of restoration at a higher restoration ratio is as good or better than at the normal ratio. The smallest allowable alternatives to the normal restoration requirements shall be two eight-foot conifers for one 12-foot conifer or two two-inch caliper deciduous for one three-inch caliper deciduous tree.

3) In the event the violators cannot restore the unlawfully removed or damaged trees, the violators shall make payment to the City forestry account. Unless otherwise determined to base the restoration costs on appraised value, the amount paid will be the City's unit cost for a restoration tree multiplied by the number of outstanding tree credits. The City's unit cost is based on the current market cost of purchase, installation and three-year maintenance for a minimum-sized tree for restoration.

4) The restoration plan shall include a maintenance plan and an agreement or security to ensure survival and maintenance of restoration trees for a three-year period unless the violation was on a site with an approved tree plan in which case, the maintenance period is five years.

9. Failure to Restore or Pay Fines.

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

b. Fines. A property owner or occupant who fails to restore or otherwise cure property on which a violation of this chapter has occurred shall be assessed a fine of $100.00 per day for each day that restoration is incomplete. Prior to assessing fines under this subsection, the City shall issue a written notice to the property owner or that restoration has not been completed. The notice shall include the following information: (1) a description of the nature of the violation; (2) a description of what actions are required to bring the property into compliance; and (3) a date by which compliance shall be required (the "compliance date"). The compliance date shall be no less than 30 days from the date the notice is served on the property owner or occupant. If the property owner or occupant does not, in the determination of the City, bring the property into compliance by the compliance date, then the City may issue an order imposing $100.00 per day fines at any time after the compliance date. The fines shall continue to accrue

until the violation has been certified to be corrected by the Planning Department. The property owner or occupant may appeal the order imposing fines to the hearing examiner using the procedures set forth in subsection 10 of this section.

10. Appeal to Hearing Examiner.

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

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

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

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

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

f. The Hearing Examiner shall conduct a hearing on the appeal pursuant to the rules of procedure provided for in the Administrative Procedures Act (Chapter 34.05 RCW) and in accordance with any rules for hearings promulgated by the Hearing Examiner. The City and the appellant may participate as parties in the hearing and each may call witnesses. The City shall have the burden of proof by a preponderance of the evidence that a violation has occurred.

11. Hearing Examiner Decision.

a. 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 imposed by the civil citation, with or without written conditions.

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

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

d. The decision of the Hearing Examiner may be reviewed in King County Superior Court using the standards set forth in RCW 36.70C.130. The land use petition must be filed

within 21 calendar days of the issuance of the final land use decision by the Hearing Examiner (see Chapter 36.70C RCW for more information).

95.~~30~~ 57 City Forestry Account

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

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

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

   c. Donations and grants for tree purposes;

   d. Sale of seedlings by the City; and

   e. Other monies allocated by the City Council.

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

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

   b. Planting and maintaining trees within the City;

   c. Identification and maintenance of landmark trees;

   d. Establishment of a holding public tree nursery;

   e. Urban forestry education;

   f. Implementation of a tree canopy monitoring program; or

   ~~f~~g. Other purposes relating to trees as determined by the City Council.

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. A goal is to achieve 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;

    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);

    b. Preserve and enhance the City of Kirkland's environmental, economic, and community character with mature landscapes;

    c. Promote site planning, building, and development practices that work to avoid removal or destruction of trees and vegetation, that avoid unnecessary disturbance to the City's natural vegetation, and that provide landscaping to buffer the effects of built and paved areas;

d. Mitigate the consequences of required tree removal in land development through on- and off-site tree replacement with the goals of halting net loss and enhancing Kirkland's tree canopy to achieve an overall healthy tree canopy cover of 40 percent City-wide over time;

e. Encourage tree retention efforts by providing flexibility with respect to certain other development requirements;

f. Implement the goals and objectives of the City's Comprehensive Plan;

g. Implement the goals and objectives of the State Environmental Policy Act (SEPA); and

h. Manage trees and other vegetation in a manner consistent with the City's Natural Resource Management Plan.

i. Preserve and protect street trees, trees in public parks and trees on other city property.

95.10 Definitions

The following definitions shall apply throughout this chapter unless the context clearly indicates otherwise. Definitions that apply throughout this code are also located in Chapter 5 KZC.

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

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

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

Diameter at Breast Height (DBH) – The diameter or thickness of a tree trunk measured at 4.5 feet from the ground.

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

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

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

Hazard Tree - A hazard tree must meet the following criteria:

1. The tree must have a combination of structural defects and/or disease which makes it subject to a high probability of failure and is in proximity to moderate-high frequency targets; and

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

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

Limit of Disturbance – The boundary at the area of minimum protection around a tree adjacent to the allowable site disturbance as determined by a qualified professional measured in feet from the trunk.

Nuisance Tree - A nuisance tree must meet the following criteria:

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

2. Tree has been damaged by past maintenance practices, that cannot be corrected with proper arboricultural practices; or

3. The problems associated with the tree must be such that they cannot be corrected by any other reasonable practice. Including but not limited to the following:

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

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

Public Works Official – Designee of the Public Works Director

Qualified Professional – An individual with relevant education and training in arboriculture or urban forestry, having at least one of the following credentials:

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

Where development is proposed, a qualified professional is expected to have experience working directly with the protection of trees during construction, have experience with the likelihood of tree survival after construction, and be able toprescribe appropriate measures necessary for the preservation of trees during land development.

Significant Tree – A tree that is at least six inches in diameter at breast height (DBH).

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

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

Site Perimeter – The area of the subject property that is 10 feet from the property line.

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

Street Tree - A tree located within the public right-of-way; provided, that if the trunk of the tree straddles the boundary line of the public right-of-way and the abutting property, it shall be considered to be on the abutting property and subject to the provisions of this chapter.

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

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

Tree Retention Value - Based on the tree retention plan information submitted by the applicant and the Planning Official's evaluation of the trees relative to the proposed development on the subject property, the Planning Official will designate each tree as having one of the following tree retention values:

1. High, a viable tree, located within required yards and/or required landscape areas determined to be healthy and windfirm by a qualified professional, and provided the trees can be safely retained when pursuing alternatives to development standards in subsections (4)(a)(2) and (4)(a)(3) of this section that meets at least one of the criteria set forth below;

    a. Landmark trees;

    b. Specimen trees;

    c. Tree groves and associated vegetation that are to be set aside as preserved groves pursuant to KZC 95.50(3);

    d. Trees on slopes of at least 10 percent; or

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

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

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

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

Wildlife Snag – The remaining trunk of a tree that is intentionally reduced in height and usually stripped of its live branches.

Windfirm – A condition of a tree in which it can withstand moderate storm winds.

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 permit. The party removing the tree will contact the City within seven days of removal to provide evidence of threat for approval of exemption. If the Planning Official determines that the emergency tree removal was not warranted, he or she may require that the party obtain a permit and/or require that replacement trees and vegetation be replanted as mitigation.

2. Utility Management. 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.

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

95.21 Tree Pruning

1. Approval Required to Prune Street Trees. It is the responsibility of a property owner to maintain street trees abutting their property. When maintaining street trees, an abutting property owner shall apply for permission to prune, trim, modify or alter a street tree by filing a written application with the City. An application to prune, trim, modify or alter a street tree shall be granted by the Public Works Official 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. The city and utility crews may perform routine pruning and maintenance of street trees.

2. Tree Pruning on Private Property. A permit is not required to prune trees on private property to the extent defined by tree removal in KZC 95.10. Tree topping is not allowed within the City of Kirkland. If a required tree smaller than six inches in diameter is topped, it must be replaced pursuant to the standards in KZC 95.55(8). If a tree six inches or larger in diameter is topped, the owner must have a qualified professional develop and implement a five-year restoration pruning program.

95.23 Tree Removal – Not Associated with Development Activity

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

2. Permit Required

No person, directly or indirectly, shall remove any significant tree on any property within the City, or any tree in the public right-of-way without first obtaining a tree removal permit as provided in this chapter, unless the activity is exempted in KZC 95.20. 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.

3. Tree Removal Application Form

The Department of Planning and Community Development and Public Works Department shall establish and maintain a tree removal application form to allow property owners to request City review of tree removal for compliance with applicable City regulations. The tree removal application form shall include at a minimum the following:

a. A site plan showing the approximate location of significant trees, their size (DBH) and their species, along with the location of structures, driveways, access ways and easements.

b. For required replacement trees, a planting plan showing location, size and species of the new trees in accordance to standards set forth in subsection (5)(c) of this section.

4. Tree Removal Application Procedure and Appeals

a. Applicants requesting to remove trees must submit a completed permit application on a form provided by the City. Within 21 calendar days, the Planning Official or when applicable, the Public Works Official shall review the application and either approve, approve with conditions or modifications, deny the application or request additional information. Any decision to deny the application shall be in writing along with the reasons for the denial and the appeal process.

b. An applicant may appeal an adverse determination to the Hearing Examiner. A written notice of appeal shall be filed with the City within 14 calendar days following the date of distribution of a City's decision. The office of the Hearing Examiner shall give notice of the hearing to the applicant at least 17 calendar days prior to the hearing. The applicant shall have the burden of proving that the City made an incorrect decision. Based on the Hearing Examiner's findings and conclusions, he or she may affirm, reverse or modify the decision being appealed.

5. Tree Removal Allowances

Any private property owner of developed property may remove up to two significant viable trees, except for the last two significant viable trees, from their property within a 12-month

period upon approval of a tree removal permit; provided that there is no current application for development activity for the site and the applicable regulations in subsections (4)(a) through (4)(c) below have been met. Removal of nuisance or hazard trees does not count toward the tree removal limit if the nuisance or hazard is supported by a report prepared by a qualified professional and approved by the City. For every significant tree that is removed, the City encourages the planting of a tree that is appropriate to the site. Below are additional requirements for tree removal.

a. 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.

b. Removal of Hazard or Nuisance Trees

Any private property owner may remove significant trees which are a hazard or nuisance from developed or undeveloped property upon approval of a tree removal permit; provided that there is no current application for development activity for the site. In addition, significant trees which are only a hazard or nuisance may be removed when they were originally required to be retained by a special regulation contained in Chapters 15 through 60 KZC, are located in a critical area or its buffer, is a street tree, and/or were designated on an approved Tree Retention Plan to be retained pursuant to KZC 95.35 and 95.50; provided that the applicable regulations in subsection (4)(b)(1) through (4)(b)(2) below have been met.

If the nuisance or hazard condition is not obvious an arborist report explaining how the tree(s) meet the definition of a nuisance or hazard tree is required. . If the removal request is for one or both of the last two trees, even if a nuisance or hazard, a one-for-one replacement is required as set forth in subsection (5)(c)(2) of this section. Below are additional requirements for hazard or nuisance trees when they are:

1) In easements dedicated to ensure the protection of vegetation; or in critical areas, or critical area buffers. A planting plan is required to mitigate the removal of the hazard or nuisance tree. The priority action is to create a "snag" or wildlife tree with the subject tree. If creation of a snag is not feasible, then the felled tree shall be left in place unless the Planning Official permits its removal in writing.

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

The removal of any tree in a critical area or NGPE will require the planting of a native tree of a minimum of six feet in height in close proximity to where the removed tree was located. Selection of native species and timing of installation shall be coordinated with the Planning Official. .

2) Street trees. If the removal request is for street trees, the Public Works Official may consider whether the tree(s) are now, or may be in the future, part of the City's plans for the right-of-way. The City shall require a one-for-one tree replacement in a suitable location.

c. Forest Management Plan

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

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

b) Identification of trees to be removed, including reasons for their removal and a description of low impact removal techniques pursuant to subsection (4)(e) of this section;

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

2) The following Forest Management Plan standards shall apply:

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

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

c) No removal of landmark or specimen trees, unless otherwise permitted by this chapter.

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

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

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

g) Removal of tree debris shall be done pursuant to Kirkland Fire Department standards.

h) Recommended maintenance prescription for retained trees with a specific timeline for such management.

95.25 Sustainable Site Development

All activities regulated by this chapter shall be performed in compliance with the applicable standards contained in this chapter, unless the applicant demonstrates that alternate measures or procedures will be equal or superior to the provisions of this chapter in accomplishing the purpose and intent of this chapter as described in KZC 95.05.

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

95.30 Tree Retention Associated with Development

1. Introduction.

The intent of this section is to successfully retain all viable trees on developing and re-developing sites and to maintain and enhance the tree canopy of Kirkland. To that end, the City requires approval of a tree retention plan in conjunction with all development permits resulting in site disturbance and with any proposed tree removal on developed sites not exempted by KZC 95.20.

In order to make better decisions about tree retention, particularly during all stages of development, tree retention plans will require specific information about the existing trees before removal is allowed. Specific tree retention plan review standards are provided in KZC 95.35(4) and include tree retention priority and incentives and variations to development standards in order to facilitate preservation of healthy, viable, significant trees.

The City's objective is to retain as many viable trees as possible on a developing site while still allowing the development proposal to move forward in a timely manner. This section includes provisions that allow development standards to be modified in order to retain viable significant trees.

The requirement to meet a minimum tree density applies to new single-family and duplex developments and major redevelopments, and new residential subdivisions and short subdivisions. If such a site falls below the minimum density with existing trees, supplemental planting is required. A tree density for existing trees to be retained is calculated to see if new trees are required in order to meet the minimum density for the entire site. Supplemental tree location priority is set as well as minimum size of supplemental trees to meet the density.

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

2. Tree Retention Plan Review Procedure

If the proposed development of the subject property requires approval through a building permit, land surface modification permit, and/or demolition permit; or Design Review, Process I, IIA, IIB, or III, described in Chapters 142, 145, 150, 152 and 155 KZC, respectively, the Tree Retention Plan will be considered as part of that process.

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

3. Tree Retention Plan Required

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

The following matrix sets forth the tree retention plan requirements for development activities and associated tree removal. Applicants for development are encouraged to confer with City staff as early in the design process as possible so that the applicable tree planting and retention concepts can be incorporated into the design of the subject property. The Planning Official may waive a component of the tree retention plan, if he or she determines that the information is not necessary.

4. Tree Retention Plan Components

The tree retention plan shall contain the following information as specified in the chart in subsection 4 below, unless waived by the Planning Official:

a. Tree Inventory:

1) A numbering system of all existing significant trees on the subject property (with corresponding tags on trees); inventory also to include significant trees on adjacent property with driplines extending over the subject property line;

2) Limits of disturbance (LOD) of all existing significant trees (including approximate LOD of offsite trees with overhanging driplines);

3) Size (DBH);

4) Tree status (removed or retained);

5) Brief general health or condition rating of these trees (i.e.: poor, fair, good, excellent, etc.);

6) Tree type or species; and

b. Site plan:

1) Location of all proposed improvements, including building footprint, access, and utilities with applicable setbacks, buffers and required landscape areas clearly identified. If a short plat or subdivision is being proposed and the location of all proposed improvements cannot be established, a phased tree retention plan review is required as described in KZC 95.30.5.a;

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

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

4) Location of tree protection measures;

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

6) Tree status (removed or retained) based on criteria in subsection 3.b of this section for all significant trees. This can be noted by an 'X' or by ghosting out;

7) Retained trees and proposed locations of any supplemental treesand any required trees in order to meet tree density or minimum number of trees as outlined in subsections (2)(b)(1)(d) and (2)(b)(1)(e) of this section.

c. Tree Assessment to contain:

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

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 individual trees);

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

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

5) Describe the impact of necessary tree removal to the remaining trees, including those in a grove or on adjacent properties;

6) For development applications, a discussion of timing and installation of tree protection measures that must include fencing and be in accordance with the tree protection standards as outlined in subsection (6) of this section; and

7) The suggested location and species of supplemental trees to be used when required. The report shall include planting and maintenance specifications pursuant to KZC 95.45 and 95.50.

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

TREE RETENTION PLAN

Development Activity Required Components	Minor [(1)(3)] - Single-Family, Duplex (includes detached units), and related demolition and land surface modification applications	Major [(2)(3)] Single-Family, Duplex, (includes detached 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, and related demolition and land surface modification applications (see KZC 95.30.6.a - Phased Review for additional standards)
TREE INVENTORY AS DESCRIBED IN KZC 95.35.4.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	
TREE ASSESSMENT REQUIREMENTS IN KZC 95.35.2.C SHALL BE PREPARED BY A QUALIFIED PROFESSIONAL AND SHALL APPLY TO:				
Significant trees within required yards or within 10 feet of any side property line		X		
Significant trees potentially impacted by proposed development activity as determined by the Planning Official			X	
Proposed removal of trees with a high tree retention value in required landscaping areas			X	
All significant trees				X
TREE RETENTION STANDARDS				

Applicant is encouraged to retain viable trees	X(4)			
Retain and protect trees with a high tree retention value to the maximum extent possible		X(4)	X(4)	X(4)
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) Applicable when new development, redevelopment, or development in which the total square footage of the proposed improvements is less than 50 percent of the total square footage of the existing improvements on the subject property

(2) Applicable when new development, redevelopment, or development in which the total square footage of the proposed improvements is more than 50 percent of the total square footage of the existing improvements on the subject property

(3) For lots created through a short subdivision, subdivision, or Planned Unit Development with an approved Tree Retention Plan, the applicant must comply with the Tree Retention Plan approved with the short subdivision, subdivision, or Planned Unit Development unless subsection (5)(a) below applies.

(4) To retain trees with a high tree retention value, the applicant shall pursue, where feasible, applicable variations in the development standards of this code as outlined KZC 95.32 of this chapter.

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

a. Phased Review.

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

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

b. Modifications to Tree Retention Plan for Short Plats and Subdivisions.

1) Modification Prior to any Tree Removal. If a Tree Retention Plan was approved during the short plat or subdivision review process which established the location of all proposed improvements, including the building footprint, utilities, and access, and no tree removal has occurred, the Planning Official may approve a modification to the approved Tree Retention Plan provided that the following requirements are met:

a) A new Tree Retention Plan shall be required at each phase of the project as more information about the location of the proposed improvements is known subject to all of the requirements in KZC 95.30. Tree removal shall be limited to those affected areas.

b) The Planning Official shall not approve or deny a modification pursuant to this section without first providing notice of the modification request to the owners and residents of each adjoining property and providing opportunity for comment.

c) The Planning Official shall use mailing labels provided by the applicant, or, at the discretion of the Planning Official, by the City. Said comment period shall not be less than seven calendar days

d) The fee for processing a modification request shall be as established by City ordinance.

2) Modification after any Tree Removal. Any modification where tree removal has already occurred based on a Tree Retention Plan that established building footprint(s), access, and utilities as part of an approved short plat or subdivision approval process and which results in the removal of trees greater than what was approved in the original Tree Retention Plan, may be approved by the Hearing Examiner based on the following criteria:

a) The modification is consistent with the tree density and replanting requirements in KZC 95;

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

c) The modification does not result in removal of more than 50% of the trees to be retained and will not, in any substantial way, change the proposed development or violate any requirement of this chapter;

d) The modification is necessary because of special circumstances regarding the size, shape, topography, or other physical limitations of the subject property relative to the location of proposed improvements on the subject property;

e) There is no practicable or feasible alternative development proposal that results in the least amount of additional tree removal; and

3) Any modification, that does not involve the removal of trees greater than what was originally approved, shall be reviewed and decided upon by the Planning Official based on the provisions of this chapter.

95.32 - Incentives and Variations to Development Standards

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

Requirements of the Kirkland Zoning Code may be modified by the Planning Official as outlined below when such modifications would further the purpose and intent of this chapter as set forth in KZC 95.05 and would involve trees with a high retention value.

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

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

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

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

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

4. Stormwater. Requirements pertaining to stormwater may be varied if approved by the Public Works Official under KMC 15.52.060.

5. Additional Variations. In addition to the variations described above and the minimum tree density requirements in KZC 95.33 below, the Planning Official is authorized to require site plan alterations to retain trees with a high retention value. Such alterations include minor adjustments to the location of building footprints, adjustments to the location of driveways and access ways, or adjustment to the location of walkways, easements or utilities. The Planning Official and the applicant shall work in good faith to find reasonable solutions.

95.33 - Tree Density Requirement

The required minimum tree density is 30 tree credits per acre for single-family, duplex (includes detached units), short plats, and/or subdivisions and associated demolition and land surface modification. For individual lots in a short subdivision or subdivision with an approved Tree Retention Plan, the tree density shall be calculated for each lot within the short plat or subdivision. The tree density may consist of existing trees pursuant to the priority established in subsection (4)(a)(1) of this section, or supplemental trees or a combination of existing and supplemental trees pursuant to subsection (5)(c) of this section. Existing trees transplanted to an area on the same site shall not count toward the required density unless approved by the

Urban Forester based on transplant specifications provided by a qualified professional that will ensure a good probability for survival.

1. Tree Density Calculation. For the purpose of calculating required minimum tree density, City Parks, City right-of-way, and areas to be dedicated as City right-of-way shall be excluded from the area used for calculation of tree density.

   Tree density calculation for existing individual trees:

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

   b. The tree credit value that corresponds with DBH shall be found in Table 95.33.1.

Table 95.33.1

Tree Density for Existing Significant Trees

(Credits per minimum diameter – DBH)

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

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

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

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

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

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

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

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

4) Site perimeter.

5) On individual residential building lots.

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

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

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

95.34 - Tree Protection during Development Activity

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Grade.

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

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

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

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

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

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

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

95.40 Required Landscaping

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

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

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

   a. Various use zone charts, in Chapters 15 through 60 KZC, establish additional or special buffering requirements for some uses in some zones.

   b. Chapter 85 KZC, Geologically Hazardous Areas, addresses the retention of vegetation on steep slopes.

   c. Chapter 90 KZC, Drainage Basins, addresses vegetation within sensitive areas and sensitive area buffers.

   d. Chapter 110 KZC and Chapter 19.36 KMC address vegetation within rights-of-way, except for the I-405, SR-520, and Burlington Northern rights-of-way.

   e. KZC 115.135, Sight Distance at Intersections, which may limit the placement of landscaping in some areas.

   f. Chapter 22 KMC addresses trees in subdivisions.

2. Use of Significant Existing Vegetation.

   a. General. The applicant shall apply subsection KZC 95.35(4) to retain existing trees and vegetation in areas subject to the landscaping standards of this section. The Planning Official shall give substantial weight to the retained trees and vegetation when determining the applicant's compliance with this section.

   b. Supplement. The City may require the applicant to plant trees, shrubs, and groundcover according to the requirements of this section to supplement the existing vegetation in order to provide a buffer at least as effective as the required buffer.

   c. Protection Techniques. The applicant shall use the protection techniques described in KZC 95.35(6) to ensure the protection of significant existing vegetation.

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

95.41 Supplemental Plantings.

1. General. The applicant shall provide the supplemental landscaping specified in subsection (5)(b) of this section in any area of the subject property that:

   a. Is not covered with a building, vehicle circulation area or other improvement; and

   b. Is not a critical area, critical area buffer, or in an area to be planted with required landscaping; and

   c. Is not committed to and being used for some specific purpose.

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

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

   b. One tree for each 1,000 square feet of area to be landscaped. At the time of planting, deciduous trees must be at least two inches in caliper and coniferous trees must be at least five feet in height.

   c. If a development requires approval through Process I, IIA, IIB or III as described in Chapters 145, 150, 152 and 155 KZC, respectively, the City may require additional vegetation to be planted along a building facade if:

      1) The building facade is more than 25 feet high or more than 50 feet long; or

      2) Additional landscaping is necessary to provide a visual break in the facade.

   d. In RHBD varieties of rose shrubs or ground cover along with other plant materials shall be included in the on-site landscaping.

   e. If development is subject to Design Review as described in Chapter 142, the City will review plant choice and specific plant location as part of the Design Review approval. The City may also require or permit modification to the required plant size as part of Design Review approval.

94.42 Minimum Land Use Buffer Requirements.

The applicant shall comply with the provisions specified in the following chart and with all other applicable provisions of this chapter. Land use buffer requirements may apply to the

subject property, depending on what permitted use exists on the adjoining property or, if no permitted use exists, depending on the zone that the adjoining property is in.

LANDSCAPING CATEGORY ↓	ADJOINING PROPERTY ↓	***Public park or low density residential use or if no permitted use exists on the adjoining property then a low density zone.**	**Medium or high density residential use or if no permitted use exists on the adjoining property then a medium density or high density zone.**	**Institutional or office use or if no permitted use exists on the adjoining property then an institutional or office zone.**	**A commercial use or an industrial use or if no permitted use exists on the adjoining property then a commercial or industrial zone.**
A		Must comply with KZC 95.40(6)(a) (Buffering Standard 1)	Must comply with KZC 95.40(6)(a) (Buffering Standard 1)	Must comply with KZC 95.40(6)(b) (Buffering Standard 2)	
B		Must comply with KZC 95.40(6)(a) (Buffering Standard 1)	Must comply with KZC 95.40(6)(a) (Buffering Standard 1)		
C		Must comply with KZC 95.40(6)(a) (Buffering Standard 1)	Must comply with KZC 95.40(6)(b) (Buffering Standard 2)		
D		Must comply with KZC 95.40(6)(b) (Buffering Standard 2)			
E					
Footnotes:		*If the adjoining property is zoned Central Business District, Juanita Business District, North Rose Hill Business District, Rose Hill Business District, Totem Center or is located in TL 5, KZC 95.40(6) does not apply.			

This chart establishes which buffering standard applies in a particular case. The following subsections establish the specific requirement for each standard:

1. For standard 1, the applicant shall provide a 15-foot-wide landscaped strip with a six-foot-high solid screening fence or wall. Except for public utilities, the fence or wall must be placed on the outside edge of the land use buffer or on the property line when adjacent to

private property. For public utilities, the fence or wall may be placed either on the outside or inside edge of the landscaping strip. A fence or wall is not required when the land use buffer is adjacent and parallel to a public right-of-way that is improved for vehicular use. See KZC 115.40 for additional fence standards. The land use buffer must be planted as follows:

a. Trees planted at the rate of one tree per 20 linear feet of land use buffer, with deciduous trees of two and one-half inch caliper, minimum, and/or coniferous trees eight feet in height, minimum. At least 70 percent of trees shall be evergreen. The trees shall be distributed evenly throughout the buffer, spaced no more than 20 feet apart on center.

b. Large shrubs or a mix of shrubs planted to attain coverage of at least 60 percent of the land use buffer area within two years, planted at the following sizes and spacing, depending on type:

1) Low shrub – (mature size under three feet tall), one- or two-gallon pot or balled and burlapped equivalent);

2) Medium shrub – (mature size from three to six feet tall), two- or three-gallon pot or balled and burlapped equivalent);

3) Large shrub – (mature size over six feet tall), five-gallon pot or balled and burlapped equivalent).

c. Living ground covers planted from either four-inch pot with 12-inch spacing or one-gallon pot with 18-inch spacing to cover within two years 60 percent of the land use buffer not needed for viability of the shrubs or trees.

2. For standard 2, the applicant shall provide a five-foot-wide landscaped strip with a six-foot-high solid screening fence or wall. Except for public utilities, the fence or wall must be placed on the outside edge of the land use buffer or on the property line when adjacent to private property. For public utilities, the fence or wall may be placed either on the outside or inside edge of the landscaping strip. A fence or wall is not required when the land use buffer is adjacent and parallel to a public right-of-way that is improved for vehicular use. See KZC 115.40 for additional fence standards. The landscaped strip must be planted as follows:

a. One row of trees planted no more than 10 feet apart on center along the entire length of the buffer, with deciduous trees of two inch caliper, minimum, and/or coniferous trees at least six feet in height, minimum. At least 50 percent of the required trees shall be evergreen.

b. Living ground covers planted from either four-inch pot with 12-inch spacing or one-gallon pot with 18-inch spacing to cover within two years 60 percent of the land use buffer not needed for viability of the trees.

3. Plant Standards. All plant materials used shall meet the most recent American Association of Nurserymen Standards for nursery stock: ANSI Z60.1.

4. Location of the Land Use Buffer. The applicant shall provide the required buffer along the entire common border between the subject property and the adjoining property.

5. Multiple Buffering Requirement. If the subject property borders more than one adjoining property along the same property line, the applicant shall provide a gradual transition between different land use buffers. This transition must occur totally within the area which has the less stringent buffering requirement. The specific design of the transition must be approved by the City.

6. Adjoining Property Containing Several Uses. If the adjoining property contains several permitted uses, the applicant may provide the least stringent land use buffer required for any of these uses.

7. Subject Property Containing Several Uses. If the subject property contains more than one use, the applicant shall comply with the land use buffering requirement that pertains to the use within the most stringent landscaping category that abuts the property to be buffered.

8. Subject Property Containing School. If the subject property is occupied by a school, land use buffers are not required along property lines adjacent to a street.

9. Encroachment into Land Use Buffer. Typical incidental extensions of structures such as chimneys, bay windows, greenhouse windows, cornices, eaves, awnings, and canopies may be permitted in land use buffers as set forth in KZC 115.115(3)(d); provided, that:

   a. Buffer planting standards are met; and

   b. Required plantings will be able to attain full size and form typical to their species.

95.43 Outdoor Use, Activity, and Storage

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

1. That portion of an outdoor use, activity, or storage area which abuts another outdoor use, activity, or storage area which is located on property zoned for commercial or industrial use.

2. Outdoor use, activity, and storage areas which are located adjacent to a fence or structure which is a minimum of six feet above finished grade; and do not extend outward from the fence or structure more than five feet; provided, that the total horizontal dimensions of these areas shall not exceed 50 percent of the length of the facade or fence (see Plate 11).

3. If there is an improved path or sidewalk in front of the outdoor storage area, the outdoor use, activity or storage area may extend beyond five feet if a clearly defined walking path at least three feet in width is maintained and there is adequate pedestrian access to and from the primary use. The total horizontal dimension of these areas shall not exceed 50 percent of the length of the facade of the structure or fence (see Plate 11).

4. Outdoor dining areas.

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

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

95.44 Internal Parking Lot Landscaping Requirements

The following internal parking lot landscape standards apply to each parking lot or portion thereof containing more than eight parking stalls.

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

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

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

    a. At least one deciduous tree, two inches in caliper or a coniferous tree five feet in height.

    b. Groundcover shall be selected and planted to achieve 60 percent coverage within two years.

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

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

6. 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. 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 95.40.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 95.40.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, or in combination with the following. In the RHBD Regional Center 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) If the street is a pedestrian-oriented street, the wall may also include a continuous trellis or grillwork, at least five feet in height above the ground, placed on top of or in front of the wall and planted with climbing vines. The trellis or grillwork may be constructed of masonry, steel, cast iron and/or wood.

2) If the wall abuts a pedestrian-oriented street, the requirements of this subsection may be fulfilled by providing pedestrian weather protection along at least 80 percent of the frontage of the subject property.

e. If development is subject to Design Review as described in Chapter 142 KZC, the City will review plant choice and specific plant location as part of the Design Review approval. The City may also require or permit modification to the required plant size as part of Design Review approval.

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

Perimeter Parking Lot Landscaping

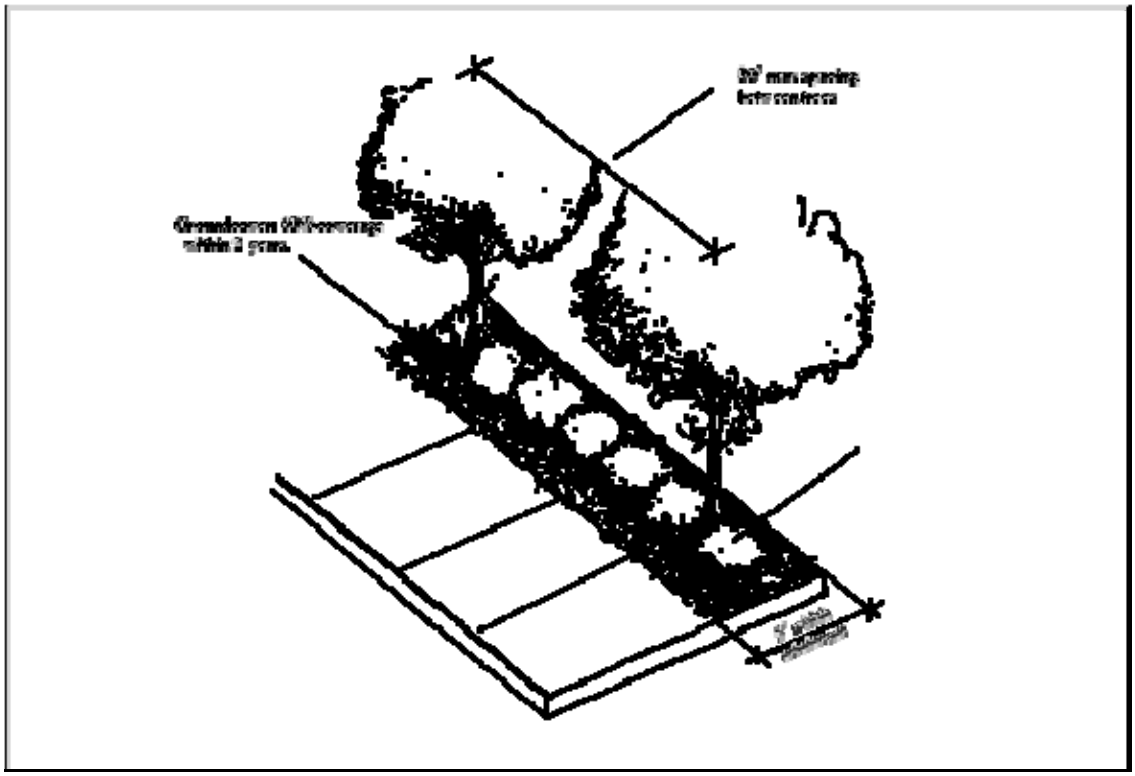


FIGURE 95.40.A

Perimeter Parking – Examples of Various Screen Wall Designs

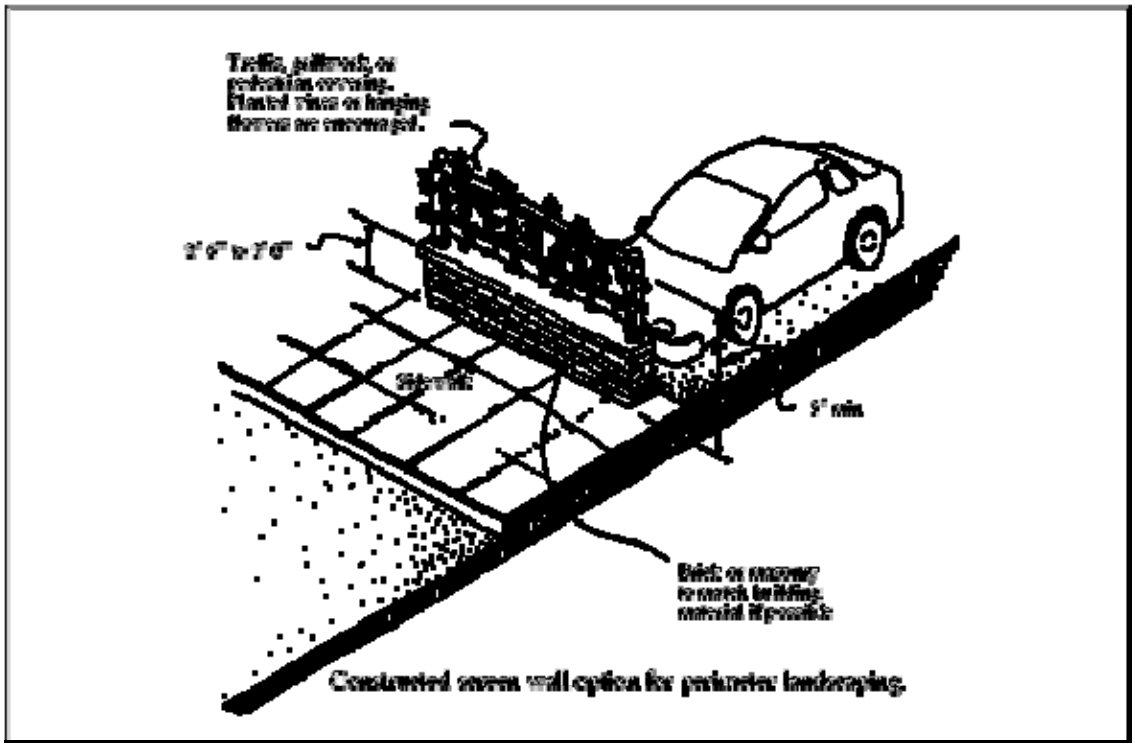


FIGURE 95.40.B

Perimeter Parking – Examples of Various Screen Wall Designs

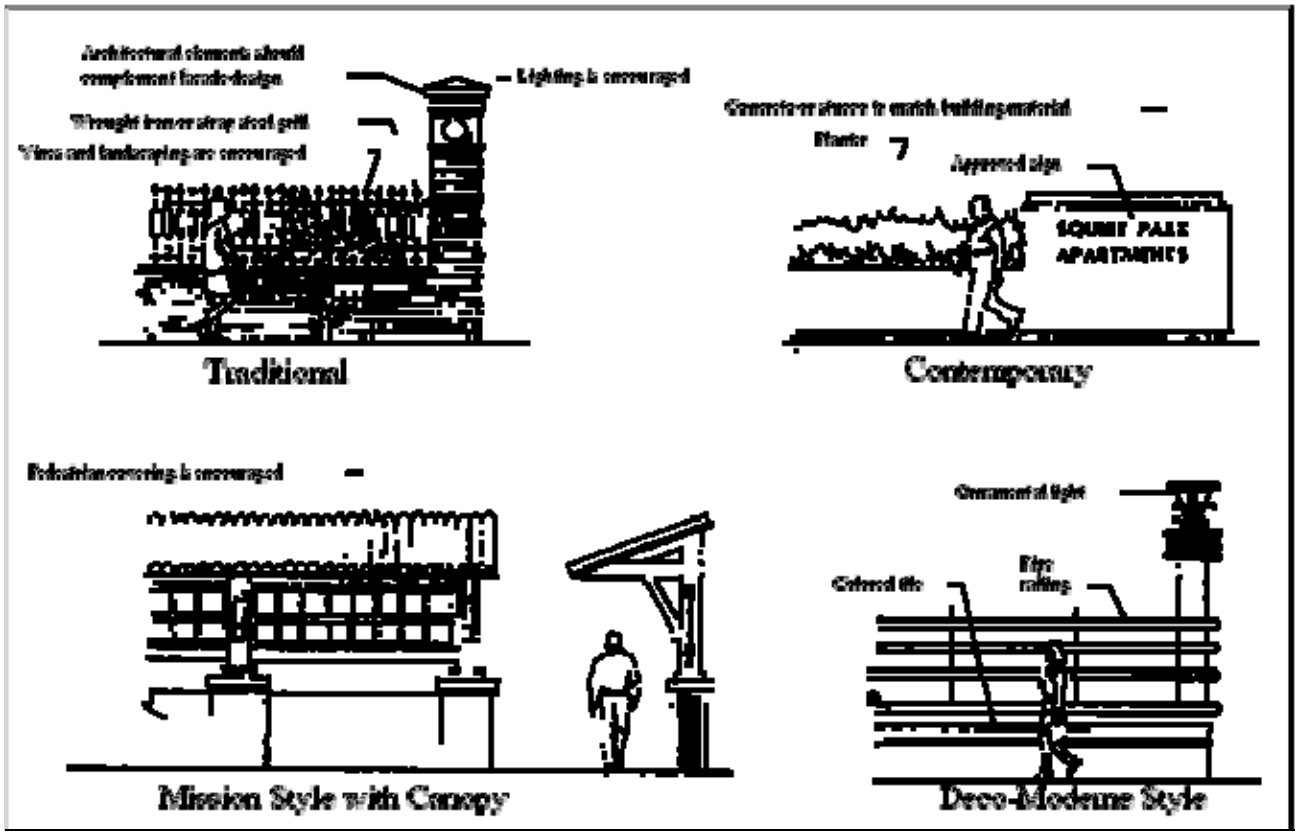


FIGURE 95.40.C

95.46 Modifications to Landscaping Standards.

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. 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

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

2. Modifications to General Landscaping Requirements

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

If the above does not apply, the Planning Official may grant a modification in writing under the provisions of this section.

b. Internal parking lot landscaping Modifications. For a modification to the internal parking lot landscaping requirements in KZC 95.44, the landscape requirements may be modified if:

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

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

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

c. Perimeter parking lot and driveway landscaping. For a modification to the perimeter landscaping for parking lots and driveways, the buffering requirements for parking areas and driveways may be modified if:

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

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

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

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

95.47 Nonconforming Landscaping and Buffers.

1. The landscaping requirements of subsections (5) and (7) of this section must be brought into conformance as much as is feasible, based on available land area, in either of the following situations:

a. An increase of at least 10 percent in gross floor area of any structure; or

b. An alteration to any structure, the cost of which exceeds 50 percent of the replacement cost of the structure.

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

a. An increase in gross floor area of any structure (the requirement to provide conforming buffers applies only where new gross floor area impacts adjoining property); or

b. A change in use on the subject property and the new use requires larger buffers than the former use.

95.50 Installation Standards for Required Plantings

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

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

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

2. Timing. All landscaping shall be installed prior to the issuance of a certificate of occupancy, except that the installation of any required tree or landscaping may be deferred during the summer months to the next planting season, but never for more than six months. Deferred installation shall be secured with a performance bond pursuant to Chapter 175 KZC prior to the issuance of a certificate of occupancy.

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

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

5. Plant Selection.

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

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

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

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

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

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

6. Fertilization. All fertilizer applications to turf or trees and shrubs shall follow Washington State University, National Arborist Association or other accepted agronomic or horticultural standards.

7. Irrigation. The intent of this standard is to ensure that plants will survive the critical establishment period when they are most vulnerable due to lack of watering. All required plantings must provide an irrigation system, using either Option 1, 2, or 3 or a combination of those options. For each option irrigation shall be designed to conserve water by using the best practical management techniques available. These techniques may include, but not be limited to: drip irrigation to minimize evaporation loss, moisture sensors to prevent irrigation during rainy periods, automatic controllers to insure proper duration of watering, sprinkler head selection and spacing designed to minimize overspray, and separate zones for turf and shrubs and for full sun exposure and shady areas to meet watering needs of different sections of the landscape.

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

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

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

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

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

9. Mulch.

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

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

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

11. Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Plants intended to mitigate for the loss of natural resource values are subject to the following requirements in addition to the other requirements of KZC 95.45. Where these requirements conflict with other requirements of this chapter, these requirements take precedence. Refer to Chapters 85 and 90 KZC for additional requirements for these areas.

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

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

c. Fertilizer Applications. Fertilizers shall be applied in such a manner as to prevent its entry into waterways and wetlands and minimize its entry into storm drains. No applications shall be made within 50 feet of a waterway or wetland, or a required buffer as established by the City codes (such as Chapter 90 KZC) or Kirkland Shoreline Master

Program (SMP, KMC Title 24), whichever is greater, unless specifically authorized in an approved mitigation plan or otherwise authorized in writing by the Planning Official.

95.51 Tree and Landscape Maintenance Requirements

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

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

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

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

   b. Any existing tree or other existing vegetation designated for preservation in a Tree Retention Plan shall be maintained for a period of five years following issuance of the certificate of occupancy for the individual lot or development. After five years, all trees on the property are subject to KZC 95.20 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, Required Landscaping.

3. Maintenance of Preserved Grove. Any applicant who has a grove of trees identified for preservation on an approved tree plan pursuant to KZC 95.35(4)(a)(1)(b) 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). 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.

95.52 Prohibited Vegetation

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

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

95.55 Enforcement and Penalties

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

The City may utilize one or more of several remedies when responding to violations of this chapter. In almost all cases where a violation has occurred, the City will issue a civil citation that describes the nature of the violation, the actions necessary to remedy the violation, and the amount of any civil penalty, among other things. If the acts that constitute a violation appear to be ongoing, the City may also issue a notice of cease and desist. Failure to adhere to a notice to cease and desist will result in imposition of additional civil penalties. If there is a pending development or building permit, the City may also issue a stop work order or withhold issuance of permit approval or a certificate of occupancy. Finally, additional fines

may be imposed if a violator does not follow through in a timely manner with restoration work or other compliance issues.

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

   For code enforcement provisions regarding street trees and trees located on City property see Kirkland Municipal Code Chapter 19.36.

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

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

5. Stop Work Order. If a violation of this chapter or an approved Tree Retention Plan occurs on property on which work is taking place pursuant to a City of Kirkland development or building permit, the Building Official may suspend some or all of the work as appropriate through issuance of a stop work order. The Building Official shall remove the stop work order when the City determines that the violation has been corrected or when the City has reached an agreement with the violator regarding rectification of the violation. Any stop work order issued under this section may be appealed using the procedures set forth in Chapter 21.06 KMC.

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

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

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

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

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

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

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

Note: Section 95.55 continues on page 636.23.

7. Civil Penalty.

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

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

c. The amount of the penalty shall be assessed in accordance with Table 95.55.1. The Planning Official may elect not to seek penalties if he or she determines that the circumstances do not warrant imposition of civil penalties in addition to restoration.

Table 95.55.1 – Penalties

Types of Violations	Allowable Fines per Violation
1. Removal of tree(s) approved to be removed, but prior to final tree plan approval or issuance of a City tree removal permit	$100.00 per tree
2. Removal or damage of tree(s) that are or would be shown to be retained on an approved tree plan or any other violation of approved tree protection plan	$1,000 per tree
3. Removal of tree(s) without applying for or obtaining a required City permit	$1,000 per tree

8. Tree Restoration.

a. Violators of this chapter or of a permit issued thereunder shall be responsible for restoring unlawfully damaged areas in conformance with a plan, approved by the Planning Official, which provides for repair of any environmental and property damage, and restoration of the site; and which results in a site condition that, to the greatest extent practical, equals the site condition that would have existed in the absence of the violation(s). In cases where the violator intentionally or knowingly violated this chapter or has committed previous violations of this chapter, restoration costs may be based on the City-appraised tree value of the subject trees in which the violation occurred, utilizing the industry standard trunk formula method in the current edition of Guide for Plant Appraisal. If diameter of removed tree is unknown, determination of the diameter size shall be made by the Planning Official by comparing size of stump and species to similar trees in similar growing conditions. The amount of costs above the approved restoration plan will be paid into the City forestry account.

b. Restoration Plan Standards. The restoration plan shall be in accordance to the following standards:

1) The number of trees required to be planted is equal to the number of tree credits of illegally removed trees according to Table 95.35.1.

2) The minimum size for a tree planted for restoration is 12-foot-tall conifer and three-inch caliper deciduous or broadleaf evergreen tree. The City may approve smaller restoration tree sizes at a higher restoration ratio, provided the site has capacity for the additional trees and the results of restoration at a higher restoration ratio is as good or better than at the normal ratio. The smallest allowable alternatives to the normal restoration requirements shall be two eight-foot conifers for one 12-foot conifer or two two-inch caliper deciduous for one three-inch caliper deciduous tree.

3) In the event the violators cannot restore the unlawfully removed or damaged trees, the violators shall make payment to the City forestry account. Unless otherwise determined to base the restoration costs on appraised value, the amount paid will be the City's unit cost for a restoration tree multiplied by the number of outstanding tree credits. The City's unit cost is based on the current market cost of purchase, installation and three-year maintenance for a minimum-sized tree for restoration.

4) The restoration plan shall include a maintenance plan and an agreement or security to ensure survival and maintenance of restoration trees for a three-year period unless the violation was on a site with an approved tree plan in which case, the maintenance period is five years.

9. Failure to Restore or Pay Fines.

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

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

10. Appeal to Hearing Examiner.

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

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

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

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

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

f. The Hearing Examiner shall conduct a hearing on the appeal pursuant to the rules of procedure provided for in the Administrative Procedures Act (Chapter 34.05 RCW) and in accordance with any rules for hearings promulgated by the Hearing Examiner. The City and the appellant may participate as parties in the hearing and each may call witnesses. The City shall have the burden of proof by a preponderance of the evidence that a violation has occurred.

11. Hearing Examiner Decision.

a. 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 imposed by the civil citation, with or without written conditions.

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

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

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

95.57 City Forestry Account

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

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

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

c. Donations and grants for tree purposes;

d. Sale of seedlings by the City; and

e. Other monies allocated by the City Council.

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

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

b. Planting and maintaining trees within the City;

c. Identification and maintenance of landmark trees;

d. Establishment of a holding public tree nursery;

e. Urban forestry education;

f. Implementation of a tree canopy monitoring program; or

g. Other purposes relating to trees as determined by the City Council.

TREE REGUALTIONS UPDATE - QUESTIONNAIRE

1) It is estimated that the current tree canopy coverage is 32%. The City's tree canopy goal is 40%. Do you feel that the goal of 40% is the right amount?

- [ ] 1 - Should be a lot lower
- [ ] 2 - Should be a little lower
- [ ] 3 - Right amount
- [ ] 4 - Should be a little higher
- [ ] 5 - Should be a lot higher

2) Should the City's priority in meeting the tree canopy goal be protecting existing mature trees?

- [ ] Yes
- [ ] Uncertain
- [ ] No

3) Would you like to be notified if tree removal, associated with new development, is occurring in your neighborhood?

- [ ] Yes
- [ ] No

If yes, indicate how you would like to be notified by checking one or more boxes below:

- [ ] Notice of Tree Removal Posted on Property
- [ ] Postcard
- [ ] Other

4) Have you been concerned about previous tree removals in your neighborhood?

- [ ] Yes
- [ ] No

If yes, what were your concerns?

5) Should trees be as highly protected as other environmental resources such as streams and wetlands?

- ☐ Yes
- ☐ Uncertain
- ☐ No

6) Should trees on public property (e.g., trees in parks or along streets) be held to higher protection and replanting standards than trees on private property?

- ☐ Yes
- ☐ Uncertain
- ☐ No

7) Should property owners have the right to remove trees on their property without needing to get a permit?

- ☐ Yes
- ☐ Uncertain
- ☐ No

8) Should the City fund and maintain an ongoing tree management program to include tracking the retention and replacement of trees, maintaining a tree inventory, and conducting periodic tree canopy analysis to measure our progress?

- ☐ Yes
- ☐ Uncertain
- ☐ No

DEVELOPMENT RELATED QUESTIONS

9) Have you submitted a tree plan for development review within the City?

- [ ] Yes
- [ ] No

10) The pre-2006 tree regulations required 25% of trees in a short plat be retained and had no specific tree retention requirements for subsequent single-family building permits. Do you feel that the current regulations do a better job of retaining viable trees in the long term?

- [ ] Yes
- [ ] Uncertain
- [ ] No

If you disagree with the above statement, list three ways in which the City can improve its tree regulations:

11) At what stage of the development process can trees be realistically identified for retention?

- [ ] Pre submittal/information gathering stage
- [ ] Short Plat Application
- [ ] Grading Permit Application
- [ ] Building Permit Application

TREE REMOVAL NOT ASSOCIATED WITH DEVELOPMENT

12) If you own property within the City of Kirkland, how many trees do you have on your property that are approximately 6" diameter measured 4.5 feet from the ground?

13) Do you plan on removing trees in the near future?

- Yes
- No

If so, what are your reasons?

14) Do you plan on planting trees in the near future?

- Yes
- No

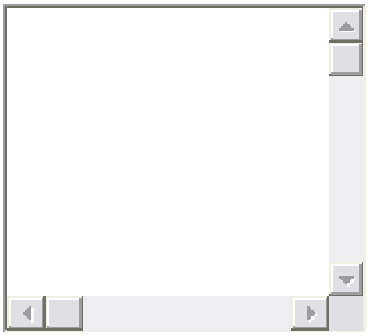
If so, what are your reasons?

15) When driving home, you notice in your neighborhood that the last two mature trees on a single-family lot are being removed. Should the City require new trees be planted to replace the trees being removed?

- Yes
- No

If yes, how many new trees should be planted?

16) Please provide us with any other comments and/or suggestions regarding this project:



Tree Regulation Questionnaire

Summary of Responses to Question #16 – *Please provide us with any other comments and/or suggestions regarding this project*:

1. I think the level of government intrusion into private property rights has extended way too far; with tree regulations only the latest example. We have a number of mature trees on our property. These are trees that we bought, planted and nurtured for more than 25 years. They do not belong to the City or the "community". Decisions regarding their fate such as whether let them die from brown rot; or whether we cut them down are not the government's business.

2. I feel as long as you plant trees to replace ones that are removed, that should be the extent of the regulation.

3. Know the current research in arboriculture. At least one study shows that a cleared plat with stringent replanting requirements may be more successful years down the road than one where mature trees were protected during construction but later failed due to stress on the root zone (which ALWAYS extends beyond the fenced area).

4. 1) In a development in my neighborhood, the builder was easily able to have most of the trees condemned to get around the regulations. One tree was left for seven lots of healthy wooded area. It is my (and others' perception) that developers can work around any regulations they do not like. 2) In my area, many homes' view and exposure has been lost because of the city practice requiring no cutting of trees in the wetland. These "trees" are weedy saplings that grow along the side of the road, planted by no one, wanted by no one, and of no benefit. Yet they cannot be cut down or even weeded out because they are on public property. Meanwhile, see #1 for what happens to the mature existing trees.

5. If trees were allow to grow to maturity and if development did not occur, the trees would be over 100 fee tall and block views. That's the nature of evolution and development. Mature trees should retained whenever a house is built.

6. I'm personally frustrated at how difficult your requirements are to read. We simply would like to carve out more useable space in our backyard and replant immediately more trees. The fact that builders were allowed to build so close to the trees 20 years ago frustrates me now. Because now the burden is on us.

7. i applaud the city of kirkland for taking so seriously the environmental and sociological necessity for protecting the trees in our area. i would encourage the city to continue to work toward a more sustainable and broader environmental approach. in short - good work, keep it up!

8. Trees on public property in view corridors should be topped at the maximum building height to maintain views.

9. Keep up the good work>

10. King County was able to have developments with mature trees integral to the design, why does Kirkland development start with bulldozers across almost all of the land? Why can't we

promote our tree policy at the household level and in our schools to build an appreciative next generation?

11. I think the City is overly involved in "reaction" and needs to be more pro-active with neighborhoods and homeowners. We're your allies in this, but don't know what kind of support we'd get or if there's a process for those of us who are not developers.

12. It should have explained was "tree canopy" is. How in the world was I supposed to answer the first several questions? What does 32% or 40% mean??? Very poorly created survey!

13. I think the concept is great but you see in some instances such as our HOA it cost us more money to remove trees that were 100 feet high due to the policy of the city. It really made no sense frankly. These trees were dangerous, they were 100 feet tall and 2 feet from some homes yet we could only remove a certain amount. So, we waited another year. Yes, some were still healthy but where does common sense start and finish under these circumstances. In this situation your arborist was wrong but had to work under your policies.

14. I am particularly concerned with large, older diseased trees that provide a potential to cause damage in a storm. Our neighbors across the street have quite a few very old, large trees and if they fell, would land on our home. It would be nice if the City could start inspecting large trees to prevent potential. The cost could be charged back to the homeowners. That might be difficult, but it seems that something should be done to keep track of the older trees.

15. Some of my neighbors have up to 10-12 tall spindly trees in their yards, very close to their homes, and have to wait months for permits to come. There should be a better middle ground to keep both owners safer from falling trees (potential of), and the city trying to retain its tree cover. Trees in the median strips are gorgeous, BUT then give us slippery roads in the Fall and Winter. Wish we could have trees at fencelines only, to give us all the oxygen we need, the privacy we want, but also keep the green mold off the houses and roofs due to lack of sun.

16. I don't think that tree regulations on private property is the City's responsibility. If you want to increase the tree canopy, you should plant trees on City property, not force homeowners to do it, or keep existing ones. There are far too many reprocussions from trees (roots, views, fall damage, and maintenance among others) for this issue to be regulated in a manner that is fair and makes sense.

17. I don't like government even city gov controlling what people can do with their private land. Hopefully this will not take people's rights away from them.

18. I have been disappointed in the Houghton Community Council's weak leadership regarding this issue of tree conservation within the Houghton Neighborhood. This has been a great disservice to the future quality of the community. Meanwhile, I applaud the responsible leadership of the Kirkland City Council--thank you.

19. Trees are a vital component of the Kirkland environment. Long term planning and planting or trees as well as on going maintenance is critical to the future of our city in decades to come. I am VERY frustrated with street trees that die or are damaged in auto accidents that are not replanted. These are important to our city and MUST be replaced. We need a program where trees are replaced every fall--such a program does not exist! Study after study has

proven that for every one dollar spent on tree maintenance, that street and park trees return between $1.69 to $5.09 in benefits to the city. This city MUST increase the amount of money spent on park and street tree maintenance! None of us can get this same return on investment on Wall Street! The City Council MUST increase the budget for tree maintenance in the City! Crews need proper equipment and adequate training to perform maintenance on trees to benefit our City. Street trees are incredibly important to the look and feel of Kirkland. Too many trees are suffering due to a lack of water in the summer. Parks have recently been putting drip bags on trees. But this is not enough. We need a program where property owners are made aware of the value of street trees to thier property values and businesses are made aware of the value of trees to increased business and that if they water the street trees we all benefit. Question # 7 above is interesting. In that, thuis is America and we should have the right to do what we please on our own property. And yet, trees on my neighbors' property benefit me with their aesthetics and their envrionmental benefits. Given that properties with large trees have a higher value than the same properties without mature trees, and that the trees in the neigborhood have a positive effect on my property values, we should all be taking trees and property values into account before we cut down healthy mature trees.

20. As a property owner, you should have the right to do whatever you want with trees on your property. There should be no need to submit plans for removal, trimming, replanting, etc.

21. I think that there needs to be more information out there about what are 'okay' trees to plant in Kirkland so that they don't block views or fall easily or have invasive roots. Perhaps the tree suggestions could be handed out at local nurseries and nursery gardeners could help property owners do a better job of picking a good tree for their property. I think the city should think a bit more about where it plants trees. They are often under power lines and often need pruning or over underground utilities and their roots can cause problems after awhile. The city needs to have money set aside to take care of sidewalks and roadways that are distorted by tree root growth. Also I see trees that have been planted in a row along the street and inevitably one of the trees will be blocking the driver's view of an important road sign. There needs to be more oversight by the city to make sure that driving views at intersections are not obscured by trees. Too many home owners aren't keeping their trees pruned. The city seems to have little power to make home owners prune their trees nor is it willing to come out and prune privately owned trees that overhang the street too much

22. How can homeowners protect healthy trees on their property from neighbors and developers.

23. I should make it clear that I love trees and gardening in general, and I understand that we as a city have the right- the responsibility- to enact regulations as to the character of the use of property in the city. However, it is unacceptable to diminish the value of private property for the public good without just compensation to the property owner. This is the concept of compensation in re: eminent domain. The existing tree regulations, while accomplishing an effect I prefer, do so in a manner that concerns me for the rights of my fellow property owners that may not feel the same about trees as I do. If we as a city decide to create, or continue an existing tree regulation that impairs peoples private enjoyment and economic exploitation of property then we must be prepared to spend the city funds to compensate those property owners. This raises another issue. At present: * The city is proposing additional taxes * Cutting city services including parks (with lots of trees ironically) is being contemplated in lieu or in addition to the above. * Previous temporary taxes have become permanent. * We are in a recession. I question whether adding additional costs of

notification, enforcement, remediation and compenstation to the city, or passing the burden on to private individuals in a time when economic activity is to be encouraged, not discouraged is appropriate. Thank you for taking the time to solicit input like this via the Web. I work at a startup 60+ hours a week. I rarely have time to attend city meetings. Getting input in this manner makes it possible for me to participate when I am able to.

24. Provide guidance on managing healthy and damaged/diseased trees.

25. Afraid I don't know what current tree regulation is. I appreciate the City's desire to protect trees, but believe that at times tree protection is given too much priority over increasing amount of sun ground cover gets.

26. City is concerned about trees but seems to care little about allowing the subdivision of lots creating a dense populace, traffic problems, neighbor problems, all resulting in a degradation of quality of life in Kirkland. Additionally, the City does nothing to maintain property values when it comes to derilict properties. Non-resident owners are allowed to let their properties fall into despair and or renting to people that care little about the neighborhood and it's peace and safety. The City needs to look at it's priorities and create a better living envrionment for property owners that live here, trees are not where we need to spend resources. The Citys lack of concern for property owners (that live here) rights has contributed to reducing property values. We have huge forests in the Pacific Northwest we do not need to live in these forests, nor do we need to try and create a forest environment for each lot in our city. If people want to clear trees for any reason they should not be controlled by City laws. Reduce existing laws that impinge on a property owners right to maintain his own land.

27. We had several large trees come down in our backyard from a city right of way a couple of years ago. Since then I have been concerned about the stabilty of some of the trees that are being preserved. As you look to maintain and increase tree coverage (which I strongly support), please also include basic safety considerations.

28. Tree regulations must walk a fine line between wildlife habitat and a homeowner's personal property rights. In my mind, the City of Kirkland has modestly tipped the scale too far in favor of the tree canopy and has over-reached on the rights of individual homeowners. We need to slightly soften the current restrictions in the Tree Regulations.

29. I don't think the City should be concerning themselves too much with trees on private properties. I have to believe there are more important issues to be dealing with.

30. I think the main concern that I have is that the people who have the money or know how to work the system get the trees down but the individual homeowner who can't afford the time or money it becomes ridiculous. I love trees and I think it is great we try and preserve esp in parking lots, parks, etc. But I do believe the individual homeowner takes the brunt of this. If the tree falls on a house and I was not allowed to cut it down, will the city pay for that? No but I have to. Just unfair to the homeowner who is not rich.

31. Notification of City ordinances regarding trees should be sent to every property owner, developer and tree company. too many people use the excuse of "oops I didn't know"... site visits by the City arborist and urban forester should be required before trees are allowed to be removed. an arborist report from the owner or developer can be written in such a way as to favor what they want and is not always trustworthy. developers have been known to not

do a complete site plan showing all trees. we need to increase code enforcement and fines. required new plantings of trees should be checked both at the onset of the plantings and at the end of their bond time for health and proper structure.

32. I am strongly am in favor of preservation of trees. There are air quality reasons, ground quality reasons, wildlife reasons. Removal should be allowed but restricted. We need to think outside ourselves and be courageous in our tree policy. Sometimes trees are diseased or pose a threat of falling and causing damage or harm - this removal should be allowed. Re: The survey. Some of the questions were leading. Some were not well worded and/or left too open to interpretation Surveys are difficult to design and need some expertise. They also need to be unbiased.

33. Thank you for caring enough to run this survey!

34. As a homeowner: I should be able to do with my trees whatever I choose as long as this does not adversely impact my neeighbors (from a safety perspective). I do not want the city telling me what I can and cannot do!

35. If Kirkland wants to promote itself as a 'pedestrian friendly' city, then they need to maintain safe sidewalks and remove the trees that are destroying the sidewalks!

36. Many people object to the regulation of tree cutting within private property. I think it is important for city officials to keep in mind that trees play a "public good" role in our environment. Their impact goes beyond the limits of any person's property. So there is definitively a justification for the city to protect them. When trees are cut down, whether within private property or public, it has a negative impact in the air we all breath , the aesthetics of the city as well as the habitat of wildlife and the ecosystem overall.

37. Because trees take so long to grow, they aren't replacable in any real sense. If you cut down a 100-year old tree, it will take 100 years to replace it. Therefore, trees should transcend property ownership, at least to a degree. Large trees should not be cut down, period. The bar should be very high for deciding that a tree is a hazard. You might encourage people to pre-plan for tree removal - maybe a way to register that a tree planted now is intended as a replacement for a tree already on the property. Then 10-15 years later, the old tree could be removed with less regulation than if you don't have a designated replacement tree of at least a certain size.

38. I am one home owner who is bringing suit for this dumb law - will be filed this year!

39. the focus should be on the circumstances relating to the individual property. If the property has 6 or more trees, removal should not be an issue. If large mature trees are potentially dangerous in a wind storm, their removal should be allowed and then discussion as to the planting of replacement trees.

40. There should be some debate over 'boundary line' tree removal. I would like to be able to remove trees well within my property boundaries. But if a tree is within, say, 10' of your property line, maybe there should be a review process. Keeping more boundary trees should provide the required tree canopy that you are seeking, as well as provide a feeling of separation.

41. Stay off our property for your own safety

42. No trees should be allowed to be removed - even if they are replanted - just because someone wants to improve their views of the lake. Make sure we keep areas (like north of 110th street and east of 104th Avenue) lush and green. Those areas are so beautiful and very different from i.e. the now almost clear cut East of Market neighborhood. This is a VERY heated issue, and please keep tab on responses since I fear that a few individuals that have very "adverse" relations to the city and any "regulations", will have their friends and families provide a larger number of responses, skewing the true opinion among Kirkland residents.

43. Sometimes there are valid reasons why trees should be removed (dead or decaying trees, growing too close to a home and could pose a threat in a wind storm, roots disturbing sewer lines). The City should require homeowners to get a permit to removal trees, but be lenient in some circumstances (as those mentioned above). I don't believe that builders or developers should be able to remove all trees from a property so that they can maximize the amount of houses they can built in a plat. I am a real estate agent on the Eastside and I live in Kirkland. Susan Lemaire

44. Why does this survey not cover View protection? We are a city where views are valued, but they do not seem to be valued by this project. We have zoning that addresses building heights, a desire to create a bowl effect in the downtown to protect views, but would allow and even encourage the planting of big trees that would block these same views. Where is the consistency? In some places trees are the view and inhance value; in others they are unwanted because they block the views.

45. Single family property owners should have a great amount of leeway in the maintainance and/or removal on thier property. Proposed developments should be given consideration to existing tree removal if replacement tree locations can ber identified

46. If the goal is to increase canopy coverage, consider incentives for private property owners or businesses that encourage them to plant trees.

47. thanks for the opportunity to input

48. I think that Kirkland is a view area. To that end, I think polite neighbors should grow trees that don't block the views of their neighbors (sub 26 feet). Park areas and city space should have as many trees as it can support. Govt. should encourage but not require trees on private property. To that end, your question number 1 is flawed. I like the idea of a higher tree canopy number. I don't believe it should be required by the city. If I answered higher, I am concerned that the answer will be used to support an agenda for more regulation.

49. Why can't you just encourage people to plant trees? If the point is more trees, rather than invest in services to track the number of trees, use the money to plant trees. This, to me, is a ridiculous use of funds and time. Why do the older trees really need to be kept? Many of the older trees are messes wrapped around power and/or telephone lines and look awful. Frankly, I'd rather take these trees down and plant new trees that are less likely to take out essential services. Also, I find it ridiculous that I might need to get a permit to maintain trees. I have to pay to maintain trees on my neighbors lots that grow over on to mine and that's enough of a hassle. I'm going to end up paying close to $1000 this month to fix the messes of trees, bamboo, etc in our neighbor yard that is now tearing down my fence. If it's decided

that a city tree policy is more important that my private property, then I'd expect the city to pay for repairs to the damage of my property.

50. i am glad folks are thinking about this stuff. Trees are key in our neighbor hood we should have the city planting more on streets and enforcing more citizens to apply for permits to remove trees. BUT i also think the city should approve permits but require that atleast 50% of what is taken down be replaced.

51. I didn't understand the benefit of being notificed of future tree removal (#3) unless there were some action that I could take. Maybe there is. I am distressed every time I see mature trees being cut down, dramatically pruned or made to die (wonder about poison.) On the other hand, as a home owner, I want to maintain rights to manage my property within reasonable bounds. Over the years we have voluntarily planted literally dozens of trees yet now could be constrained from easily removing them.

52. Angry citizens who's territorial views are now being blocked by trees which have grown taller should be politely asked to go away. The "offending" trees should NOT be cut down.

53. Planning is driving this policy, a planner should be inspecting. Also put a price on a tree's trunk, paid into a tree bank for those times the city and applicant simply disagree on removal but can move foward agreeably. We believe the tree policy has generally matured pretty well after a rocky launch. By the way the most important question as far as i am concerned is understanding the impact of # 11.

54. Not to put too fine a point on it, but I don't think too many residents (myself included) frankly know all that much about trees. My neighbor pointed out that my tree had died, and I got someone to come in and pull it out (which cost more than I would have liked). I would love for the City to help educate on tree planting options (e.g. what kind, where they should go) in a helpful, friendly, educational manner - not just a regulation/fining model. For example, partner with the local nurseries to send out fliers to residences in Kirkland with information on the benefits, how to set up, etc., maybe including coupons... Thanks, -Will

55. Kirkland does a great job of protecting trees, but the bureaucracy can be very unfriendly. Just because a land owner needs to remove trees doesn't mean they are out to destroy the environment. There is a real lack of cooperative engagement from the city. Things get adversarial from the start for individual landowners. It feels hard to deal with the city for one little thing when it seems that developers are cutting down swaths of trees and building on wetlands regularly.

56. We had two trees removed over the past year. One was a safety hazard.

57. This is a diffacult thing, ownership of trees, I believe that we need the trees of our health and 40% coverage is a good idea. Come see our exceptional trees I think old growth for a few.....m

58. I believe the city should be less involved with trees on private property. This is extra overkill on waterfront property.

59. Trees planted on public property under utility lines should not be topped to fit. It would be better to plant trees that are naturally shorter, or to require more trees in parking lots and other public and semi-public areas. The whole concept of planting naturally tall trees under

utility lines, then later butchering them benefits nobody, is unsightly, and costs the utilities that have to prune the trees. I've seldom seen a tree pruned correctly by a utility company. This just seems like common sense, and I don't understand why this hasn't been addressed in the tree conservation discussion.

60. I believe one of the ammenities of Kirkland is our abundant views of the lake and the mountains. The larger the tree canopy the fewer the views. Taller trees also limit the ability to take avantage of solar heating which I intend to do soon. Mold and mildew are also more prevalent when trees are blocking the sun There needs to be ways to find a middle ground to protect views and and provide sunlight while still serving environmental value of forestation. How about more vegetation but just at a lower elevation?

61. I think that trees that are prone to splitting/falling like cottonwoods and some evergreens should be treated differently than hardwood trees. Big, old cottonwoods can be very dangerous. But, trees should not be cut down just because someone wants to build a monster house. We have too many of them already.

62. I believe that the rules should be slightly flexible to meet special criteria that can arise. The rules should not be rigid and the goal should be to work with the homeowners on a mutually beneficial approach for the city and the homeowners. I have not been impressed with how the city responds to its citizens requests for tree trimming in parks especially dead limbs that can be a hazard in windy conditions (Heritage Park).

63. While I believe that maintaining our tree population is important, I do not believe that it is the City's place to control the minimum tree population. If a tree is damaging someone's home or poses a risk to the property, a homeowner should have the right to remove it without going through the red tape of getting a permit, hiring a certified arborist, etc.

64. Thank you for setting high standards....I wish there was a larger fine for tree removal with out permits...

65. How about a Carbon tax credit for the numbers of trees maintained by homeowners? Rewarding tree growth might be a better approach than just policies and restrictions. Carbon credits shouldn't just be an option for the industry. Involve the private sector with awareness/education and rewards. People tend to pay more attention when it concerns their own $$. After all we all benefit from trees.

66. Don't direct solutions re trees that cause property owner damages and directed cost. If city wants to direct the property owner then absorb the results and cost of their direction/solutions impacting the property owner property, either physically and financially.

67. You shuld place efforts and funds for the maintenance of public areas/parks only. If you insist on maintaining the 40% canopy than you should ensure that the trees in private property should meet the safety and care requirements in order to avoid damage to the neighbor's property.

68. I think that this project is a complete waste of taxpayer money. I also think that the way the questions in your survey are phrased shows a tremendous bias toward City involvement in an area where I don't feel staff should be involved. I tend to think that the well-educated, environmentally conscious homeowners of Kirkland can take the appropriate steps to protect our environment without fines/hammers levied by the City.

69. It's tricky getting the right balance between individual property rights and the common good but mature trees are so valuable to all of us that there should be some kind of clear and constructive regulation insuring their survival.

70. Trees that are not native but rather planted eg; apple,Cherry, birch,flowering cherry,Kasara, or Plum etc. should be exempt.

71. I believe American Forest's tree canopy cover recommendations are being inapropriately applied in shaping the urban forestry goals in Kirkland. Please revisit AF's definition of suburban, it does not match the single-family lot sizes that predominate in Kirkland. I would much rather see City resources directed toward tree planting and habitat restoration projects on public lands, as well as proactive maintenance of City street trees. I would also urge the City to negotiate with Puget Sound Energy's subcontractors to conduct line clearance pruning according to arboricultural standards. There is no excuse for the hack jobs currently done to City trees.

72. I don't live in Kirkland but am familiar with the tree regulations. It seems to me that the allowable lot size has become so small that it is increasingly difficult to retain large fir and cedar trees on side perimeters and in front yards. Lots are getting smaller and houses are getting bigger, leaving no room for large trees to flourish.

73. I think there should be some thought given to the height of trees and hte variety of treest hat are planted. I think our view corridors are important, and can be better preserved with trees of shorter mature heights or narrower circumferences, of which there are many beautiful examples.

74. Please consider reducing the city's monitoring of private home tree removal. Please consider differentiating for small and large private lots, especially for the cost to owner of large lots to remove just 2 trees in a year, rather than 5-6 trees in a 3 year span. Continue education efforts with our park plantings and for developers, and maybe offer what Seattle has done for fruiting trees, with education on-line and help for picking and care of them- and maybe encourage more small fruit trees in people's smaller yards. We're strongly in favor of rights of the property owner who pays taxes, and while we may admire and miss a mature tree, we don't think the city should tell the owner what to do for their trees. From the hearing we went to, it seemed a huge amount of resources have been spent to over-study this area at a time where staff and budget are needed on more critical issues...and how do you determine the percentage of tree canopy- from a satellite photo 1x a year? From a professional fly-over?

75. Re. Question 7): Use common sense. By all means protect our firs, cedars and other evergreens, and many deciduous trees; require removal permits for healthy trees. But allow property owners some discretion in removing junk trees (e.g., alders, magnolias) or even significant trees that are obviously distressed or pose a risk to surrounding property.

76. To strict on the Tree removal rules. Homeowners should be able to remove tree in easier fashion.