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## MEMORANDUM

To: Planning Commission

From: Deb Powers, Urban Forester  
Adam Weinstein, AICP, Deputy Planning Director

Date: November 8, 2018

Subject: Draft Code Amendments with Moderate/Major Policy Impacts,  
Kirkland Zoning Code Chapter 95, Tree Management and Required  
Landscaping, File Number CAM18-00408

### Staff Recommendation

The Planning Commission should continue its review of the more complex and controversial amendments to Kirkland Zoning Code Chapter 95 (KZC 95) in order to direct staff on developing draft code revisions.

### Background

KZC Chapter 95 (Attachment 1) establishes a permit process and standards for the protection and replacement of trees primarily on private property. The regulations address tree management in three basic categories: tree removal where no development is involved; tree retention associated with residential development activity; and landscaping/buffer requirements typically associated with commercial and multifamily development.

The purpose of the 2018 tree code revision is to support the goals established in **Kirkland's Comprehensive Plan and the** objectives in the [Urban Forestry Strategic Management Plan](#), to address issues and challenges that have arisen since the last tree code revision and to update the code so that it is effective and practical to use. With the exception of minor code amendments, KZC 95 was last updated in 2010.

As a foundation to the code update project, **the background of Kirkland's tree code and** a description of how the code currently works was outlined in the [June 28, 2018 memo](#) (pages 4-11) to the Planning Commission. Since a basic understanding of tree canopy cover was needed to make decisions on whether the City should change its metric for code requirements, information on canopy cover was provided in the same memo (pages 2-3).

**Staff's** list of code issues and interpretations from 2014 is a key component of the potential tree code amendments. Additional code issues and potential amendments were identified from various sources such as:

### Holmes Point Overlay Code Amendment Process

There were a number of proposed Holmes Point Overlay (HPO) code amendments for consideration on a city-wide basis, including:

- Establish a minimum tree canopy cover percentage on a lot-by-lot basis
- Increase quantitative tree retention/planting requirements (tree credits)
- Redefine/increase qualitative tree retention/planting requirements (tree retention values)

### 2018 Intern Findings on Tree Code Efficacy

Intern findings were presented in the [August 9, 2018 Planning Commission memo](#).

Some of the key takeaways resulting from this research project are:

- Excessive planting of slow-growing, columnar conifers that don't contribute to tree canopy at maturity
- Poorly-located newly planted (required) trees
- Need for improvements in retaining large trees on development sites (intern findings indicated that large trees comprise only 10 percent of all retained/planted trees on post-development sites)

### 2018 Canopy Cover Analysis

The preliminary canopy cover analysis indicates areas where the City can focus efforts towards retaining and planting trees to increase urban tree canopy cover (UTC):

- **Tree canopy increased in Kirkland's** Industrial, Parks and Institutional land use classes from 2010-2017
- The greatest canopy loss by acreage was in Single Family Residential areas
- The greatest canopy cover loss amongst neighborhoods was in Kingsgate

Recent changes to arboricultural industry standards and continued discussions with Planners, Code Enforcement and Legal staff have provided further direction on potential code amendments, along with public comments (see section below) and Planning Commission/Houghton Community Council direction.

### Houghton Community Council Comments

The Houghton Community Council (HCC) communicated to staff at an [August 27, 2018 meeting](#) that code changes should address areas where the code is:

- Too ambiguous or unclear
- Not very predictable for developers
- Inconsistent in its outcomes across multiple users encountering similar situations

More specifically, the HCC expressed an interest in code or procedural changes that would address:

- A High Retention Value tree definition that is less subjective
- Clarifying KZC 95.23 on public tree removals
- Retaining tree groves when designing parking lots
- Clarifying KZC 95.30.6 (b) on tree plan modifications
- Planned tree removal prior to development permit submittal that is the **"unintended consequence"** of unclear and unpredictable codes
- Damage to trees adjacent to development properties (should remain a civil issue)

- Integrating tree protection inspections with building inspection procedures

#### Planning Commission Comments

So that new data and complex code amendments could be presented and discussed in manageable segments, the Planning Commission (PC) directed staff to consolidate the list of all known potential code amendments. Potential codes/issues were classified by the policy impact of the modification using Planning and Building Department guidelines:

*No Impact* - amendments that clarify or further define something already in the code, address redundancies and typos or are simple reformatting or removal of outdated references. They do not change the meaning of the code.

*Minor Impact* - amendments resulting from updates to Best Available Science, Best Management Practices, industry standards, etc. that do not result in changes to code intent or an increase in requirements.

*Moderate Impact* - relatively uncontroversial restructuring of code sections, and any of the above that result in new, increased or eliminated requirements.

*Major Impact* - **substantially prohibit/ban or add new requirements to what's currently** allowed. These may result in significant changes to procedures, additional cost to permit applicants or change the intent of the code.

The most straightforward (no/minor policy impact) potential code amendments were the focus of the [September 13, 2018 Planning Commission](#) meeting memo, which lists the amendments and includes draft code in Attachment 2. While the Planning Commission acknowledged that although these amendments may need additional refinement, there was agreement that the general text and direction of the draft code was appropriate. These revisions may, however, be affected by factors such as additional amendments to KZC 95.

At the [September 27, 2018 Planning Commission](#) meeting presentation, the moderate- and major-impact potential code amendments were discussed. The potential code amendments discussed during this meeting, shown at the top of Attachment 3, fall under these sections of KZC 95:

- Definitions
- Tree Removal Allowances
- Landscaping Required by Zone

The Planning Commission requested additional information and options for some of the potential code amendments discussed at prior meetings. These are shown below the Tree Retention Associated with Development Activity code section, listed as Miscellaneous/September 27, 2018.

The Tree Retention Associated with Development Activity section of KZC 95 encompasses the most complex and controversial of the potential code amendments. These are shown in the shaded area in Attachment 3 and will be the focus of the

November 8, 2018 PC meeting. Note that some of these issues may have been previously discussed due to the same topic appearing in multiple code sections.

So that discussions and recommendations on similar codes issues can be read and considered simultaneously, potential code amendments are grouped by development permit sequence, in the following order:

- Issues prior to permit submittal
- Development review process
- Tree protection standards
- Quantitative tree retention standards
- Qualitative tree retention standards
- Tree replacement standards
- Miscellaneous/September 27, 2018

The specific code sections affected by the potential amendments, the primary code issue, a brief discussion of the issue, options to consider and staff recommendations are shown in each analysis matrix below.

#### KZC 95 Analysis of Moderate/Major Impact Potential Code Amendments

##### ISSUES PRIOR TO PERMIT SUBMITTAL

59. Prevent girdling/tree removal prior to development permit submittal
Code sections: KZC 95.23.5, KZC 95.30.2, KZC 95.23.2, KZC 95.10.19
Issue: High quality trees preemptively removed from potential development sites. Previously discussed under #38, 56, and 58.
Discussion: Girdling/tree removal occurs under the 2-per-year tree removal allowance prior to development permit submittal to intentionally avoid compliance with "High Retention Value" tree requirements.
Options: 1. <b>Define girdled trees as tree removal (similar to "topping")</b> 2. Clearly prohibit such activities, similar to City of Renton (RMC 4-4-130D): <i>"Prohibited Activities: Tree Cutting in Advance of Issuance of Land Development Permit – there shall be no tree removal or land clearing on any site for the sake of preparing that site for future development."</i> 3. Specify an acceptable time period between tree removal and development permit submittal in KZC 95.23.5 such as <b>"...any private property owner may remove up to two significant trees...provided, that...a development permit application will not be submitted within 90 days."</b> 4. Consider recently girdled/removed trees at development permit submittal as unauthorized tree removal subject to code enforcement. Data used to ascertain unauthorized tree removal could include tree surveys, arborist reports, GIS data, aerial/street view photos, and evidence of tree removal on-site.
Staff recommendation: All options, address related code amendments #38, #56 and #58.

DEVELOPMENT REVIEW PROCESS

43. Update tree code to reference Low Impact Development (LID)/current green building standards
Code section: KZC 95.25
Issue: Support sustainable site development.
Discussion: Currently the code <b>reads: "Qualifying projects shall seek 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..."</b> but does not reference current green building or LID standards.
Options: 1. No change to code 2. Reference LID standards within the Public Works Pre-Approved Plans and Policies, Kirkland Municipal Code 15.52 and King County Stormwater Manual 3. Add "...sustainability certifications that include, but are not limited to, International Living Futures Institute (ILFI) Living Building Challenge, Leadership in Energy and Environmental Design (LEED), Built Green Net Zero, Salmon Safe, ILFI Net Zero or Passive House programs that will be equal or superior to the provisions of KZC 95."
Staff recommendation: Option 2 and 3 with language that limits significant deviation from KZC 95.

65. Require Landscape Architect review of Tree Retention Plans
Code sections: KZC 95.10.12, KZC 95.30
Issue: Assure tree canopy cover goals are achieved over time
Discussion: The Finn Hill Neighborhood Alliance (FHNA) strongly advocates using an additional third-party review process to ensure tree plan proposals will result in a specific canopy cover percentage over time. The PC has generally not expressed support for regulating canopy cover on a lot-by-lot basis. Note that the Landscape Architecture industry uses no uniform standard for canopy cover growth projections; therefore the requirement could be subjective if not prescribed by the code update or in a procedures document. This proposed requirement would significantly <b>increase permit applicants' cost for</b> development review.
Options: 1. Continue to <b>require qualified arborists' reports</b> as third-party review of Tree Retention Plans. 2. Conduct canopy cover analyses on 8-year cycles, adjusting code requirements to reflect changes in tree canopy cover.
Staff recommendation: Options 1 and 2, no code amendment warranted.

73. Determine tree retention early in the short plat/subdivision design process (i.e.: Citywide Integrated Development Plan (IDP) review)
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Code sections: KZC 95.35.5, KZC 95.30.6
Issues: Phased short plat/subdivision plan review results in preemptive tree removal prior to permit submittal and frequent disagreement between staff and developers on code interpretation.
Discussion: Making tree retention/removal decisions as utilities, access and building footprint locations are being determined is effective towards preserving groves of trees and trees of merit. A Citywide IDP process would allow for a more predictable and consistent process for tree plan review.
Options: <ol style="list-style-type: none"> <li>1. Require IDP Citywide to make the code more prescriptive</li> <li>2. Amend the related modifications to IDP (#22)</li> </ol>
Staff recommendation: All options

#### TREE PROTECTION STANDARDS

45/46. Revise tree protection fence/sign standards & inspection procedures
Code section: KZC 95.34.2
Issue: Retained trees damaged during development activity.
Discussion: Tree protection fence is moved during construction, resulting in damage that may warrant tree removal. If the damage goes unnoticed, future homeowners may need to remove declining/dead trees. Chainlink fence by the roll/rebar is less expensive for development permit applicants.
Options: <ol style="list-style-type: none"> <li>1. Update code to reflect change in materials/installation so that fence is immovable (no pier block).</li> <li>2. Update Pre-Approved Standards for tree protection fence and sign standards.</li> <li>3. Change on-site tree fence inspection procedures during development activities.</li> <li>4. Update tree code enforcement in Kirkland Municipal Code Title 1.12.100 (see <a href="#">City Council June 19, 2018 memo</a>).</li> <li>5. Require site plans showing approved tree retention/protection be displayed on development sites with contractor phone number.</li> </ol>
Staff recommendations: All options

#### QUANTITATIVE TREE RETENTION STANDARDS

40. Establish a cut-off point or maximum tree density credits awarded for retained significant trees
Code section: KZC 95.33.1, Table 95.33.1
Issue: Although meant to incentivize large tree retention, the current tree density credit system results in fewer trees being retained on sites with a substantial number of trees.
Discussion: Tree density credits are awarded by tree size, up to 21 credits for a 50" DBH tree (DBH is trunk diameter at breast height, 4.5 feet above grade). Often applicants can

achieve the minimum required credits by retaining just 1-2 large trees on a development site, which likely results in reduced tree canopy cover over time.
Options: <ol style="list-style-type: none"> <li>1. No change to existing tree credit maximum, or</li> <li>2. <b>Keep the current tree credit system, but "cap" or limit tree density credits at 30"</b> DBH (11 credits), or</li> <li>3. Consider eliminating tree density credits (quantitative) and shift focus to trees on sites that are most worthy of retention efforts (qualitative) in response to intern findings and canopy cover analysis. This option is explained more in #64/72.</li> </ol>
Staff recommendations: Option 3

55. Limit credits awarded for planting arborvitae on new development sites
Code section: KZC 95.33.1b, KZC 95.33.4
Issue: Slow-growing, columnar tree species with high mortality rates do not meet the intent of the code.
Discussion: Planning intern findings revealed an excessive use of arborvitae, a slow-growing columnar form conifer, to meet tree density credits on Single Family lots resulting from short plats and subdivisions. Very often these sites had little to no other trees and vegetation. The greatest loss in canopy cover acreage from 2010-2017 is in single-family land use per 2018 canopy cover analysis.
Options: <ol style="list-style-type: none"> <li>1. Limit the number of tree credits awarded for slow-growing columnar conifers planted on a development site, or</li> <li>2. Eliminate tree credits and establish a maximum percentage of arborvitae or similar species that can be planted, or</li> <li>3. Consider arborvitae ineligible as new trees required on a development site, and</li> <li>4. <b>Strike "six (6) feet tall for Thuja/Arborvitae"</b> language in KZC 95.33.4</li> </ol>
Staff recommendation: Options 2 and 4

60. Respond to requests for clear, streamlined and predictable tree retention/replanting requirements
Code section: KZC 95.30
Issue: Onerous code requirements result in an avoidance of meeting tree retention requirements and less cooperation towards compliance
Discussion: Public engagement revealed a fair amount of confusion over existing code requirements, regardless of prior familiarity or frequency of use.
Options: <ol style="list-style-type: none"> <li>1. Minor or no changes to existing tree code structure.</li> <li>2. Strive to achieve greater code clarity based on model city tree codes and community feedback.</li> </ol>
Staff recommendation: Option 2

75. Replace tree density credits with canopy cover-based requirements
Code section: KZC 95.33
Issue: The FHNA strongly advocates using a canopy-based metric on a lot-by-lot basis to ascertain the sufficiency of tree planting/retention.
Discussion: See the <a href="#">June 28, 2018 Planning Commission memo</a> on the pros/cons of using canopy cover as a tree retention/replanting metric. At that meeting, the PC expressed opposition to transitioning to a canopy-based system due to: <ul style="list-style-type: none"> <li>• Ease of DBH data collection regardless of expertise</li> <li>• There are no discrepancies with trunk size (less subjective)</li> <li>• Trunk size correlates to tree size</li> <li>• Other cities use credit-based systems including Issaquah, Medina, Kenmore, Woodinville and Vancouver, WA</li> </ul>
Options: <ol style="list-style-type: none"> <li>1. No change to existing tree credit requirements, or</li> <li>2. Focus on trees worthy of retention without numerical thresholds. For sites devoid of trees, require a minimum number of new trees based on lot size (see #64/72).</li> </ol>
Staff recommendation: Option 2

77. Increase tree density credit requirements for retention/replanting on a city-wide basis
Code section: KZC 95.33
Issue: The FHNA advocates for increasing tree credit requirements city-wide to ensure canopy cover goals are met over time.
Discussion: The 2018 canopy analysis shows loss of canopy cover city-wide as a result of development. However, there are widely varying levels of canopy loss between different land-use areas, which raises equity issues when applying a uniform increase in requirements city-wide. Planning intern findings indicate low levels of large tree preservation on sites developed from 2008-2013, pointing to the need to increase retention of large trees/trees of merit on development sites.
Options: <ol style="list-style-type: none"> <li>1. Consider strategic changes to tree credit requirements with further canopy data analysis.</li> <li>2. Focus on trees worthy of retention without numerical thresholds. For sites devoid of trees, require a minimum number of new trees based on lot size (see #64/72).</li> </ol>
Staff recommendation: Option 2

QUALITATIVE TREE RETENTION STANDARDS

63. Clarify the grove easement and maintenance requirements
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Code section: KZC 95.05, 95.10, KZC 95.51.3
Issue: Disagreement on grove code interpretations between staff and developers, particularly with different development scenarios.
Discussion: KZC 95.10 defines groves as 3 or more significant trees with overlapping or touching crowns. Retaining groves of trees enhances community character, helps to slow the loss of canopy cover and furthers the intent and purpose of KZC 95. Other cities that protect tree groves are Bellevue, Issaquah, Mercer Island, Renton, Sammamish, Shoreline, and Woodinville.
Options: <ol style="list-style-type: none"> <li>1. Revise code so easement and maintenance requirements are located in the same code section.</li> <li>2. Clarify grove designations on sites undergoing remodels/additions.</li> </ol>
Staff recommendation: Options 1 and 2

64/72. Clearly designate trees of merit
Code section: KZC 95.10
Issue: Increase retention of trees of merit on development sites to reduce the loss of canopy cover, maximize benefits of trees and ensure a healthy, uneven-aged resilient urban forest. Current definitions and requirements often are areas of disagreement between staff and developers.
Discussion: A sustainable urban forest is ensured when tree planting is driven by canopy status, age distribution and species diversity objectives. Prior to the adoption of KZC 95, quantitative tree retention only was required on development sites (25 percent of all existing trees), resulting in isolated remnants of poor quality trees on Single Family Residential lots. The 2018 tree canopy analysis shows a city-wide decrease in canopy cover between 2010 and 2017, most notably in the Single Family Residential land use classification. Current <a href="#">intern findings</a> show: <ul style="list-style-type: none"> <li>• The notably good condition of trees retained on development sites indicate that High Retention Value Tree requirements are effective.</li> <li>• Required tree planting is providing an abundance of new trees.</li> <li>• Only 10% of all trees retained on development sites are <b>large trees (over 22" trunk diameter)</b>.</li> <li>• No trees that were required to be retained had been removed after the 5 Year Maintenance Agreement had expired.</li> </ul> Findings and data provide justification for pursuing retention efforts for trees of merit. The challenge is to balance the need for high quality tree retention in a manner that does not limit development potential or risk constitutional takings challenges.
Options: <ol style="list-style-type: none"> <li>1. Eliminate the Low and Moderate Tree Retention Value definitions, which have not been very effective per Planning and Building Department staff, and</li> <li>2. Clearly define and prioritize trees of merit by size, condition, grove status, etc.           <ol style="list-style-type: none"> <li>a. Landmark – healthy tree <b>over 30" DBH (Redmond, Issaquah)</b></li> </ol> </li> </ol>

<ul style="list-style-type: none"> <li>b. Specimen – the current KZC 95.10.17 definition: a viable tree greater than <b>6” DBH that’s in very good to excellent health and free of major defects as determined by the City.</b> “Viable” generally means that the tree is in good health <b>as determined by the applicant’s arborist (Issaquah, Lake Forest Park, Olympia and others)</b></li> <li>c. Grove – significant trees that form a contiguous canopy (numerous cities protect groves, see #63), and</li> </ul> <p>3. Clearly define the location of retained trees using options such as:</p> <ul style="list-style-type: none"> <li>a. outside building envelope, or</li> <li>b. within required setbacks, in yards and around the site perimeter, or</li> <li>c. “within the site interior” (Bellevue), or</li> <li>d. “not within the building footprint of the principal building on the lot, excluding those trees where alternative design of the building is feasible in retaining the tree” (Medina), or</li> <li>e. “outside the area of land disturbance except where necessary to install site improvements, e.g., driveways, utilities, etc.” (Mercer Island), and</li> </ul> <p>4. Incentivize tree preservation on private property. For example, if resources allow:</p> <ul style="list-style-type: none"> <li>a. Offer a template Voluntary Tree Conservation Easement (Example: Attachment 4)</li> <li>b. Support a citizen-led volunteer Heritage Tree Program similar to the <a href="#">City of Seattle-PlantAmnesty</a> model</li> <li>c. Conduct public education on the benefits of trees and mature tree maintenance</li> </ul>
<p>Staff Recommendations: All options</p>

<p>70. Strengthen the language on retention requirements for trees of merit</p>
<p>Code section: KZC 95.30.5</p>
<p>Issue: Provides City with increased authority to require retention of trees of merit and to direct changes to proposed improvements for their retention.</p>
<p>Discussion: Code currently reads: retain High Retention Value trees <b>“to the maximum extent possible”</b> and the <b>applicant</b> “shall pursue where feasible applicable variations in the development standards,” which often results in code interpretation disagreements between Planning and permit applicants.</p>
<p>Options:</p> <ul style="list-style-type: none"> <li>1. Clearly define and prioritize trees worthy of retention (#63, 64/72), and</li> <li>2. Specify that <i>site improvements shall be designed and constructed to protect trees with the following characteristics...</i>(Redmond, Shoreline), or</li> <li>3. Applicant must show where <i>alternative design of the building is feasible in retaining the tree</i> (Medina), or</li> <li>4. Consider Reasonable Use Exception language so an applicant would need to apply for an exception <i>if the tree code will prevent any reasonable economic use of the owner’s property</i> (Redmond, Lake Forest Park) to the Hearing Examiner.</li> </ul>
<p>Staff recommendation: Options 1 and 2 or 3</p>

69. Revise Low Retention Value tree definition to avoid tree removal loophole per PC 8/9/18
Code section: KZC 95.1013c
Issue: Perception that code allows an opportunity for unnecessary tree removal through the Low Retention Value Tree definition.
Discussion: The code currently defines Low Retention Value trees as trees <i>in a condition that would not sustain the impacts of construction and/or are located within the building footprint of a proposed structure.</i>
Options: <ol style="list-style-type: none"> <li>1. No change to existing code. The location condition does not warrant adjustment due to risk of legal takings challenges.</li> <li>2. Clearly designate and strengthen retention requirements for trees of merit (see #70, 64/72).</li> <li>3. Eliminate the Low and Moderate Tree Retention Value definitions (see #64/72).</li> </ol>
Staff recommendation: Options 2 and 3.

TREE REPLACEMENT STANDARDS

49/54. List aftercare options such as gator bags, irrigation, soil drenches, etc.
Code section: KZC 95.34.5, KZC 95.50.7
Issue: Ensure retained trees thrive following development activity.
Discussion: New methods, materials and updates to industry standards should be reflected in KZC 95.
Options: <ol style="list-style-type: none"> <li>1. Codify current Best Management Practices for retained tree maintenance.</li> <li>2. List options such as gator bags, irrigation, soil drenches, etc.</li> </ol>
Staff recommendation: Options 1 and 2

44/57/66. Specify appropriate planting locations for required trees
Code section: KZC 95.33.3, KZC 95.50
Issue: Poorly-located trees are likely to become undesirable, a nuisance or a hazard, or have a reduced normal life expectancy, which is not the intent of the tree code.
Discussion: Intern findings revealed trees required to be planted on development sites were poorly-located. New trees planted to meet development requirements are typically installed by subcontractors that are unaware of the approved Tree Plan. PC directed staff to check specifications for both private and public trees that may encroach upon sidewalks and other infrastructure.
Public Works reports there are no written guidelines for tree-infrastructure conflicts, but their procedures are as follows:

<p><i>Sidewalks</i> – first, grind or shim sidewalks lifted or damaged by a tree root as a temporary solution. If the situation becomes worse, staff removes the section of damaged sidewalk, trims the root, and then replaces the concrete. As a last resort, if root pruning will cause the tree to have structural issues, the tree will be removed and replaced after the sidewalk has been replaced.</p> <p><i>Water, sewer, and storm lines</i> – If tree roots are affecting City-owned facilities, generally root pruning is the first method to resolve the issue. There are times though that the intrusion is so detrimental to the infrastructure that the tree needs to be removed.</p> <p><i>Signal, sign and street light clearance/sightlines</i> – Streets, Grounds, Signal and Sign Divisions share in the responsibility for pruning trees/shrubs when they become overgrown and affect these assets. Requests are generated by <b>the public and the City’s Traffic Control Coordinator</b>.</p>
<p>Options:</p> <ol style="list-style-type: none"> <li>1. <u>Trees required to be planted on private property</u> <ol style="list-style-type: none"> <li>a. Codify tree distances from landscape features/hardscapes. For example, Woodinville tree codes specify new required trees must be planted at least 7 feet away from property lines.</li> <li>b. If resources allow, add verification of appropriate tree locations to final inspection procedures on development sites.</li> </ol> </li> <li>2. <u>Right of way trees</u> - revise street tree installation standards to reflect acceptable proximities to infrastructure and adequate soil volume provisions.</li> <li>3. <u>Private and public trees</u> - If resources allow, conduct public outreach and provide tree planting guidelines.</li> </ol>
<p>Staff recommendation: All options pending available resources.</p>

<p>61. Clarify <b>language regarding ‘payment in lieu of planting new trees’</b></p>
<p>Code section: KZC 95.33.3c</p>
<p>Issue: Code interpretation issues.</p>
<p>Discussion: Currently the code allows payment in lieu of tree planting when the subject site or any off-site tree locations are not available: <i>“...pay an amount of money approximating the current market value of the supplemental trees into the City forestry account.”</i> Without specifying, current market value is subjective.</p>
<p>Options:</p> <ol style="list-style-type: none"> <li>1. Update code with approval of KMC 1.12.100 using industry standards and a cost methodology based on tree trunk size.</li> <li>2. <b>Capitalize ‘City Forestry Account.’</b></li> </ol>
<p>Staff recommendation: Options 1 and 2.</p>

68. Incentivize tree species diversity per PC 8/9/18
Code section: KZC 95.23, KZC 95.33
Issue: Urban forests with greater <a href="#">species diversity</a> are more resilient.
Discussion: A healthy, resilient urban forest is ensured when tree planting is driven by canopy status, age distribution and species diversity objectives. <b>'Optimal' tree species</b> diversity is defined by no species representing more than 10% of the entire tree population at the neighborhood level. Tree species diversity is difficult to mandate on private property; however the City can apply species diversity objectives to public trees.
Options: <ol style="list-style-type: none"> <li>1. Inventory, maintain and manage public trees for <b>'optimal' performance</b> in regard to species diversity (see <a href="#">Kirkland Urban Forest Strategic Management Plan</a>).</li> <li>2. Establish community guidelines for the selection of suitable tree species.</li> <li>3. Incentivize tree species diversity on private property with tree giveaways.</li> </ol>
Staff recommendation: All options pending available resources.

77. NEW – Require permit applicants to post a bond instead of a 5 Year Maintenance Agreement for retained/planted trees per PC 9/27/18
Code section: KZC 95.34, KZC 95.51
Issue: Ensure greater survival of trees required to be retained/planted with development.
Discussion: Raised with the HPO amendments. The City did not recommend pursuing amendments at that time. Currently, a 5 Year Maintenance Agreement is recorded on the title of properties with trees required to be retained/planted with development. The PC asked staff to check with other cities using tree maintenance bonds. Bothell and Issaquah have tree maintenance bonds, Woodinville requires a bond if the installation of required trees must be deferred to a later time than at final inspection. See Attachment 5 for an email description of the City of Bothell's <b>tree bond</b> procedures. Based on that information, the City conducted an analysis of funding and staffing needs associated with requiring tree maintenance bonds for new Single Family permits: <u>Finance Department</u> - Would set up a holding account. Finance determined it would be <b>Planning's responsibility</b> to process the bonds, monitor funds and track performance. <u>Planning Department</u> - Would add 3 hours of staff work to each permit to: <ul style="list-style-type: none"> <li>• Set up a security</li> <li>• Add another inspection to determine whether to refund the bond</li> <li>• Refund or call in the security</li> <li>• Administrative support for correspondence</li> <li>• Coordinate with Finance to set up and release bond</li> </ul>
Planning had 278 New Single Family permits in 2017, which equates to an additional 834 hours or 0.41 FTE (New Single Family only). At Planner Step C, <b>that's about \$30,000 of FTE</b> resources that would need to be ultimately authorized by City Council.
Note that on over 150 intern research sites, no trees that were required to be retained were removed after the 5 Year Maintenance Agreement had expired.

Options: <ol style="list-style-type: none"> <li>1. PC recommends to City Council to provide resources for implementing a tree maintenance bond program. Adoption subject to City Council approval.</li> <li>2. Continue using the current 5 Year Maintenance Agreement.</li> </ol>
Staff recommendation: Option 2.

MISCELLANEOUS/SEPTEMBER 27, 2018

67. Regulate hedges per PC 9/27/18
Code section: KZC 95.50
Issue: Consider regulating hedges similar to fences.
<p>Discussion: Currently, the City does not regulate heights of hedges, but does regulate fence heights. Per KZC, <b>fences are limited to a height of 3.5' if within the front yard setback and 6'</b> within the side and rear yard setbacks. The maximum height limit for the zone dictates the fence height limit elsewhere on a property. The City Council considered regulating hedges in 2010 (Attachment 6). Due to the complexity of the issue, the City did not consider regulating hedges at that time. Other cities that have hedge regulations include Bellingham (Attachment 7) and Lynnwood (Attachment 8).</p> <p><b>Planning's</b> Code Enforcement supervisor notes that Code Enforcement gets involved only with violations, and reports that the City does not get complaints about hedges. His concern is with establishing a restriction that upon implementation will immediately result in a significant amount of violations. These violations, in terms of current staffing resources, will be reduced to a low priority level below life/safety/environmental issues such as building without a permit or grading in wetlands.</p> <p>Another concern is that hedges provide visual relief and screening buffers, the focus of KZC 95.40 through 95.50 (landscaping required with multifamily, commercial and industrial developments). These code sections emphasize vegetative screening to mitigate objectionable views (garbage dumpsters, for example), effects of glare (such as vehicle headlights) and to provide privacy. Regulated hedge heights may limit the screening functions that required landscaping provides, and could result in unintended consequences (such as the reduction of landscaping treatments and reduced ability to mitigate objectionable views).</p> <p>One aspect of regulating hedges that could be considered is allowing the removal of multiple significant trees that form a hedge. Currently the code does not address this situation, so property owners are limited to removing only 2 significant trees that form a hedge per 12 months. As a matter of practice, the City has allowed these removals when the property owner plants replacement tree(s).</p>
Options: <ol style="list-style-type: none"> <li>1. Define hedges/add code language allowing the removal of hedges comprising more than 2 significant trees, when replacement tree(s) are planted.</li> <li>2. Regulate fence heights with additional code enforcement resources.</li> </ol>

3. No change to existing code to regulate hedge heights.
Staff recommendation: Options 1 and 3

76. City authority to require tree removal if a tree disease/pest is severely contagious
Code section: KZC 95.20
Issue: Prevent the spread of a disease/pest that would cause catastrophic tree decline resulting in failure of public trees.
Discussion: Highly contagious pests or diseases causing severe infestations (Dutch Elm disease, Emerald Ash Borer) can quickly result in tree decline/death, resulting in potential hazards and high-cost mitigation. A <a href="#">Trees and the Law</a> bulletin prompted the City <b>Attorney's Office</b> to consider an ordinance that could prevent the rapid spread of tree contagions to public trees.
Options: <ol style="list-style-type: none"> <li>1. Determine thresholds for infestation (percentage of infected trees?) and potential consequences (cost of managing pest/tree removal? safety and welfare of the community?)</li> <li>2. Develop code authorizing the City to order diseased trees removed from private property as hazard or nuisance trees.</li> <li>3. No change to existing code.</li> </ol>
Staff recommendation: Options 1 and 2

71. Address potential conflicts between trees and renewable energy systems
Code section: KZC 95.20
Issue: Balance the intent of KZC 95 with support of environmentally-conscious methods to generate clean energy from natural resources.
Discussion: Renewable energy system hardware such as wind turbines and solar panels may necessitate tree removal for system installation and operation.
Options: <ol style="list-style-type: none"> <li>1. Add renewable energy systems as criteria for removal. Example: Issaquah grants <i>"removal of tree(s) providing solar access to buildings incorporating active solar devices..."</i></li> <li>2. No change to existing code.</li> </ol>
Staff recommendation: Option 1

72. NEW - Clearly denote limited tree removal in critical areas
Code section: KZC 95.23
Issue: To correct a prior code change

Discussion: The reference to tree removal in critical areas or critical area buffers in <a href="#">KZC 95.23.5.d(2)</a> was erroneously amended with the changes to the critical areas regulations in KZC Chapter 90 in 2017.
Options: <ol style="list-style-type: none"><li>1. Edit the language in KZC 90.135 to clearly reference critical areas to limit tree removal; move the text back to KZC 95.23; and</li><li>2. Delete the original text from KZC 90.135.</li></ol>
Staff recommendation: Options 1 and 2

Following discussion at the November 8 Planning Commission meeting, staff will seek feedback from the Planning Commission and Houghton Community Council at the November 26 joint meeting on the general approach to these proposed code amendments prior to drafting amendments to KZC 95.

#### Public Comment

Public outreach was conducted as scoped in the project Public Engagement Plan (Attachment 9). Staff met with two stakeholder groups consisting of residents that have demonstrated or expressed an interest in urban forestry regulatory issues: citizens concerned with the protection of trees, the rules governing trees on development sites and tree removal.

Four common themes heard from the first group were:

1. The code is not effective in protecting trees
2. Tree protection, inspections and code enforcement are inadequate on development sites, resulting in additional tree removal
3. Developers are either unaware of the codes or are exploiting loopholes
4. Tree credits and other code requirements do not relate to long-range canopy cover goals

Four common themes heard from the second group were:

1. The code is difficult to use
2. The code is too subjective, allowing the City to exercise too much authority with code interpretations such as with "High Retention Value" trees
3. The code needs to be more prescriptive, with predictable outcomes, yet be flexible enough to accommodate anomalies such as odd-shaped lots
4. Certain definitions and requirements for **terms like "grove"** are not clear

It was observed that in both groups, there were many incorrect assumptions made about the code, pointing for the need to provide ongoing public education beyond the implementation phase of this code revision. One common area of confusion between the two groups was the categorization and requirements for trees of merit, or trees that are considered worthy of retention on development sites.

In addition to the stakeholder meetings, staff utilized multiple public engagement events. Staff fielded many questions about the existing tree code and held conversations with citizens about the potential code revisions. Generally speaking, participants at these

events expressed an appreciation for trees and the natural environment and expressed support for tree protection codes in Kirkland.

**At the Juanita Farmer's Market**, Crossing Kirkland and City Hall for All events, signage posed the question: **"If you were in charge of trees in Kirkland, what kind of rules would you make?"** Three main themes from the conversations and comments submitted at these events include:

1. Retain large trees
2. Plant trees
3. Promote knowledge of the benefits that trees provide
4. Address tree-sidewalk conflicts

All letters and correspondence on the KZC 95 code amendments received by staff and the Planning Commission up to 12pm on October 31, 2018 have been compiled and included with this memo (Attachment 10). All themes derived from public engagement are currently being addressed with the KZC 95 code amendments. Staff expects that continued public involvement with the tree code updates may result in additional contributions to the current list of potential code amendments.

#### Next Steps

The emphasis of this memo is to commence discussions on the more complex and controversial potential tree code amendments. At the November 8 Planning Commission meeting, staff would appreciate feedback on the following:

- *Does the Planning Commission agree **with staff's recommendations**?*
- *Can the Planning Commission confirm staff has covered all key topics for KZC 95 code amendments?*
- *Is there any other information the Planning Commission needs to review the potential KZC 95 code amendments?*

The Houghton Community Council suggested a joint meeting with the Planning Commission so that both groups could discuss and consider potential tree code amendments together. The joint Planning Commission-Houghton Community Council meeting is scheduled for November 26, 2018.

The intent of the joint meeting is to further consider options for code amendments and provide clear direction to staff on draft code language. Staff will be returning with the draft code at the December 13, 2018 PC meeting so that any changes can be made prior to the Public Hearing scheduled for January 24, 2019.

#### Attachments:

1. Kirkland Zoning Code Chapter 95, Tree Management and Required Landscaping
2. Potential KZC 95 Code Amendments with No/Minor Policy Impact & Draft Code
3. Potential KZC 95 Code Amendments with Moderate/Major Policy Impact
4. Sample Voluntary Tree Conservation Easement
5. Correspondence with City of Bothell Staff re: Tree Bond Process

6. May 4, 2010 City Council Memo re: Regulating Hedges
7. Informational Handout on Hedge Regulations, City of Bellingham
8. Lynnwood Municipal Code Chapter 21.10 re: Hedge Regulations
9. Citywide Tree Code Amendments - Public Engagement Plan
10. Emails and Letters on KZC 95 Code Amendments

cc: File Number CAM18-00408

## Chapter 95 – TREE MANAGEMENT AND REQUIRED LANDSCAPING

### Sections:

95.05 Purpose and Intent

95.10 Definitions

95.20 Exemptions

1. Emergency Tree Removal
2. Utility Maintenance
3. Commercial Nurseries or Tree Farms

95.21 Tree Pruning

1. Tree Pruning of Street Trees

2. Tree Pruning on Private Property

95.23 Tree Removal – Not Associated with Development Activity

1. Introduction

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

3. Tree Removal Permit Application Form

4. Tree Removal Permit Application Procedures and Appeals

5. Tree Removal Allowances

95.25 Sustainable Site Development

95.30 Tree Retention Associated with Development Activity

1. Introduction

2. Tree Retention Plan Required

3. Tree Retention Plan Review

4. Tree Retention Plan Components

5. Tree Retention Plan

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

a. Phased Review

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

95.32 Incentives and Variations to Development Standards

1. Common Recreational Open Space

2. Parking Areas and Access

3. Required Yards

4. Storm Water

5. Additional Variations

95.33 Tree Density Requirement

1. Tree Density Calculation
2. Supplemental Trees Planted to Meet Minimum Density Requirement
3. Tree Location
4. Minimum Size and Tree Density Value for Supplemental Trees

95.34 Tree and Soil Protection during Development Activity

1. Placing Materials near Trees
2. Protective Barrier
3. Grade
4. Directional Felling
5. Additional Requirements

95.40 Required Landscaping

1. User Guide
2. Use of Significant Existing Vegetation
3. Landscape Plan Required

95.41 Supplemental Plantings

1. General
2. Standards

95.42 Minimum Land Use Buffer Requirements

95.43 Outdoor Use, Activity, and Storage

95.44 Internal Parking Lot Landscaping Requirements

95.45 Perimeter Landscape Buffering for Driving and Parking Areas

1. Perimeter Buffering – General
2. Exception
3. Design Districts
4. Overlapping Requirements

95.46 Modifications to Landscaping Standards

1. Modification to Land Use Buffer Requirements
2. Modifications to General Landscaping Requirements

95.47 Nonconforming Landscaping and Buffers

95.50 Installation Standards for Required Plantings

1. Compliance
2. Timing

3. Grading
4. Soil Specifications
5. Plant Selection
6. Fertilization
7. Irrigation
8. Drainage
9. Mulch
10. Protection

95.51 Tree and Landscape Maintenance Requirements

1. Responsibility for Regular Maintenance
2. Maintenance Duration
3. Maintenance of Preserved Grove
4. Maintenance in Holmes Point Overlay Zone
5. Nonnative Invasive and Noxious Plants
6. Landscape Plans and Utility Plans

95.52 Prohibited Vegetation

95.55 Enforcement and Penalties

95.57 City Forestry Account

1. Funding Sources
2. Funding Purposes

**95.05 Purpose and Intent**

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

- a. Minimizing the adverse impacts of land disturbing activities and impervious surfaces such as runoff, soil erosion, land instability, sedimentation and pollution of waterways, thus reducing the public and private costs for storm water control/treatment and utility maintenance;
- b. Improving the air quality by absorbing air pollutants, mitigating the urban heat island effect, assimilating carbon dioxide and generating oxygen, and decreasing the impacts of climate change;
- c. Reducing the effects of excessive noise pollution;
- d. Providing cost-effective protection from severe weather conditions with cooling effects in the summer months and insulating effects in winter;

- e. Providing visual relief and screening buffers;
- f. Providing recreational benefits;
- g. Providing habitat, cover, food supply and corridors for a diversity of fish and wildlife; and
- h. Providing economic benefit by enhancing local property values and contributing to the region's natural beauty, aesthetic character, and livability of the community.

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

The intent of this chapter is to:

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

(Ord. 4238 § 2, 2010; Ord. 4010 § 2, 2005)

#### **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.

1. Caliper – The American Association of Nurserymen standard for trunk measurement of nursery stock. Caliper of the trunk shall be the trunk diameter measured six (6) inches above the ground for up to and including 4-inch caliper size and 12 inches above the ground for larger sizes.
2. Critical Root Zone – The area surrounding a tree at a distance from the trunk, which is equal to one (1) foot for every inch of trunk diameter measured at 4.5 feet from grade or otherwise determined by a qualified professional (example: one (1) foot radius per one (1) inch DBH).
3. Crown – The area of a tree containing leaf- or needle-bearing branches.

4. Diameter at Breast Height (DBH) – The diameter or thickness of a tree trunk measured at 4.5 feet from the ground. DBH is also known as Diameter at Standard Height (DSH).
5. Dripline – The distance from the tree trunk, that is equal to the furthest extent of the tree’s crown.
6. Grove – A group of three (3) or more significant trees with overlapping or touching crowns.
7. Hazard Tree – A tree that meets all the following criteria:
  - a. A tree with a combination of structural defects and/or disease which makes it subject to a high probability of failure;
  - b. Is in proximity to moderate to high frequency targets (persons or property that can be damaged by tree failure); and
  - c. The hazard condition of the tree cannot be lessened with reasonable and proper arboricultural practices nor can the target be removed.
8. Impact – A condition or activity that affects a part of a tree including the trunk, branches, and critical root zone.
9. Limit of Disturbance – The boundary between the protected area around a tree and the allowable site disturbance as determined by a qualified professional measured in feet from the trunk.
10. Nuisance Tree – A tree that meets either of the following criteria:
  - a. Is causing obvious physical damage to private or public structures, including but not limited to: sidewalk, curb, road, driveway, parking lot, building foundation, or roof; or
  - b. Has sustained damage from past maintenance practices.

The problems associated with the tree must be such that they cannot be corrected by reasonable practices including but not limited to: pruning of the crown or roots of the tree, bracing, and/or cabling to reconstruct a healthy crown.
11. Public Works Official – Designee of the Public Works Director.
12. Qualified Professional – An individual with relevant education and training in arboriculture or urban forestry, having two (2) or more of the following credentials:
  - International Society of Arboriculture (ISA) Certified Arborist;
  - Tree Risk Assessor Certification (TRACE) as established by the Pacific Northwest Chapter of ISA (or equivalent);
  - American Society of Consulting Arborists (ASCA) registered Consulting Arborist;
  - Society of American Foresters (SAF) Certified Forester for Forest Management Plans;

For tree retention associated with a development permit, a qualified professional must have, in addition to the above credentials, a minimum of three (3) years’ experience working directly with the protection of trees during construction and have experience with the likelihood of tree survival after construction. A qualified professional must also be able to prescribe appropriate measures for the preservation of trees during land development.
13. Retention Value – The Planning Official’s designation of a tree based on information provided by a qualified professional that is one (1) of the following:

a. 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 pursuant to KZC 95.32:

- 1) Specimen trees;
- 2) Tree groves and associated vegetation that are to be set aside as preserved groves pursuant to KZC 95.51(3);
- 3) Trees on slopes of at least 10 percent; or
- 4) Trees that are a part of a grove that extends into adjacent property, such as in a public park, open space, critical 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;

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

c. 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.

14. Significant Tree – A tree that is at least six (6) inches in diameter at breast height (DBH) as measured at 4.5 feet from the ground.

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

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

17. 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.

18. 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.

19. 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.

20. 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 windfirm if isolated or remains as part of a grove, and is a species that is suitable for its location.

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

22. Windfirm – A condition of a tree in which it withstands average peak local wind speeds and gusts.

(Ord. 4551 § 4, 2017; Ord. 4238 § 2, 2010; Ord. 4193 § 1, 2009; Ord. 4010 § 2, 2005)

### **95.20 Exemptions**

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

1. **Emergency Tree Removal.** Any tree that poses an imminent threat to life or property may be removed. The City must be notified within seven (7) days of the emergency tree removal with evidence of the threat for removing the tree to be considered exempt from this chapter. If the Planning Official determines that the emergency tree removal was not warranted or if the removed tree was required by a development permit, the Planning Official may require that the party obtain a permit and/or require that replacement trees and vegetation be replanted as mitigation.
2. **Utility Maintenance.** Trees may be removed by the City or utility provider in situations involving interruption of services provided by a utility only if pruning cannot solve utility service problems. Utility maintenance shall conform to a City-approved Utility Vegetation Management Plan.
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.

(Ord. 4238 § 2, 2010; Ord. 4010 § 2, 2005)

#### **95.21 Tree Pruning**

1. **Tree Pruning of Street Trees.** It is the responsibility of the abutting property owner to maintain street trees abutting their property, which may include pruning, watering, and mulching. In order to prune, trim, modify, or alter a street tree, the abutting property owner shall apply for a permit by filing a written application with the City. Pruning shall conform to the most recent version of the American National Standards Institute (ANSI) A300 Part 1 – 2001 pruning standards or as outlined in an approved Utility Vegetation Management Plan. The City reserves the right to have City or utility crews 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. Pruning which results in the removal of at least half of the live crown will be considered tree removal and subject to the provisions in KZC 95.23.

Tree topping is not allowed. If a tree required by this chapter is smaller than six (6) inches in diameter and is topped, it must be replaced pursuant to the standards in Chapter 1.12 KMC. If a tree six (6) inches or larger in diameter is topped, the owner must have a qualified professional develop and implement a 5-year restoration pruning program.

(Ord. 4281 § 1, 2011; Ord. 4238 § 2, 2010)

#### **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 for Removal of Trees on Private Property or City Right-of-Way.** It is unlawful for any person (other than City crews) to remove, prune, trim, modify, alter or damage a tree in a public park or on any other City property.

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 and subsection (5) of this section.
3. **Tree Removal Permit Application Form.** The Planning and Building Department and Public Works Department shall establish and maintain a tree removal permit 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 KZC 95.33(3).

4. Tree Removal Permit Application Procedure and Appeals.

a. Applicants requesting to remove trees must submit a completed permit application on a form provided by the City. The City shall review the application within 21 calendar days 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. The decision of the Planning Official is appealable using the applicable appeal provisions of Chapter 145 KZC.

c. Time Limit. The removal shall be completed within one (1) year from the date of permit approval.

5. Tree Removal Allowances.

a. Except in the Holmes Point Overlay zone, any private property owner of developed property may remove up to two (2) significant trees from their property within a 12-month period without having to apply for a tree removal permit; provided, that:

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

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

b. Tree Retention and Replacement Requirements.

1) Tree Retention. For single-family homes, cottages, carriage units, two/three-unit homes, two (2) trees shall be required to remain on the subject property.

2) Tree Replacement.

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

b) If a tree removal request is for one (1) or both of the trees required to remain, a tree removal permit and one-for-one replacement is required. the replacement tree shall be six (6) feet tall for a conifer and 2-inch caliper for deciduous or broad-leaf evergreen tree.

c) For all other uses not listed in subsection (5)(b)(1) of this section, a tree removal permit is required and the required tree replacement will be based on the required landscaping standards in KZC 95.40 through 95.45.

c. Shoreline Jurisdiction. Properties located within 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 Chapter 83 KZC for additional standards.

d. **Removal of Hazard or Nuisance Trees.** Any private property owner seeking to remove any number of significant trees which are a hazard or nuisance from developed or undeveloped property or the public right-of-way shall first obtain approval of a tree removal permit and meet the requirements of this subsection.

1) **Tree Risk Assessment.** If the nuisance or hazard condition is not obvious, a tree risk assessment prepared by a qualified professional explaining how the tree(s) meet the definition of a nuisance or hazard tree is required. 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.

2) **Trees in Critical Areas or Critical Areas Buffers.** See Chapter 90 KZC.

3) **The removal of any tree in the Holmes Point Overlay Zone** requires the planting of a native tree of a minimum of six (6) feet in height in close proximity to where the removed tree was located. Selection of native species and timing of installation shall be approved by the Planning Official.

4) **Street Trees.** Street trees may only be removed if determined to be a hazard or nuisance. 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.

e. **Forest Management Plan.**

1) A Forest Management Plan must be submitted for developed, significantly wooded sites (over 40 percent canopy coverage) of at least 35,000 square feet in size in which removal of more than two (2) trees is requested and is not exempt under KZC 95.20. A Forest Management Plan must be developed by a qualified professional and shall include the following:

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

b) Identification of trees to be removed, including reasons for their removal and a description of low impact removal techniques pursuant to subsection (5)(e)(2) of this section;

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

2) The following Forest Management Plan standards shall apply:

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

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

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

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

e) The reforestation plan ensures perpetuity of the wooded areas. The size of planted trees for reforestation shall be a minimum of three (3) feet tall.

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

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

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

(Ord. 4551 § 4, 2017; Ord. 4491 § 3, 2015; Ord. 4437 § 1, 2014; Ord. 4408 § 1, 2013; Ord. 4372 § 1, 2012; Ord. 4238 § 2, 2010)

### **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, storm water 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.

(Ord. 4238 § 2, 2010; Ord. 4010 § 2, 2005)

### **95.30 Tree Retention Associated with Development Activity**

1. Introduction. 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. To that end, the City requires approval of a tree retention plan in conjunction with all development permits resulting in site disturbance and for any tree removal on developed sites not exempted by KZC 95.20. This section includes provisions that allow development standards to be modified in order to retain viable significant trees.

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 provided in this section establish tree retention priorities, incentives, and variations to development standards in order to facilitate preservation of viable trees.

A minimum tree density approach is being used to retain as many viable trees as possible with new development activity. The requirement to meet a minimum tree density applies to new single-family homes, cottages, carriage units, two/three-unit homes, 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 required tree 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.

Properties within jurisdiction of the Shoreline Management Act are subject to additional tree retention and protection regulations as set forth in Chapter 83 KZC.

Properties within the Holmes Point Overlay zone are subject to additional tree retention and protection regulations as set forth in Chapter 70 KZC.

2. 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 (1) tree retention plan component, the more stringent tree retention plan component 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 chart in subsection (5) of this section 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 the Planning Official determines that the information is not necessary.

3. Tree Retention Plan Review. Any proposed development of the subject property requiring approval through a building permit, land surface modification permit, and/or demolition permit, or Design Review, Process I, IIA or IIB, described in Chapters 142, 145, 150 and 152 KZC respectively, shall include a tree retention plan to 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 retention value as defined in KZC 95.10, Definitions, for application towards the regulations in this chapter.

4. Tree Retention Plan Components. The tree retention plan shall contain the following information as specified in the chart in subsection (5) of this section, unless waived by the Planning Official:

a. A tree inventory containing the following:

- 1) A numbering system of all existing significant trees on the subject property (with corresponding tags on trees); the inventory must also 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 off-site trees with overhanging driplines);
- 3) Size (DBH);
- 4) Proposed tree status (trees to be 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.

b. A site plan depicting the following:

- 1) Location of all proposed improvements, including building footprint, access, utilities, applicable setbacks, buffers, and required landscaped 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 subsection (6)(a) of this section;
- 2) Accurate location of significant trees on the subject property (surveyed locations may be required). The site plan must also include the 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 resulting from grading, demolition, or construction activities (including approximate LOD of off-site trees with overhanging driplines);
  - 6) Proposed tree status (trees to be removed or retained) noted by an ‘X’ or by ghosting out;
  - 7) Proposed locations of any supplemental trees and any required trees in order to meet tree density or minimum number of trees as outlined in KZC 95.33.
- c. An arborist report containing the following:
- 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 unsuitability 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 KZC 95.34; 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 95.50 and 95.51.

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	Minor <sup>(1)(3)</sup> – Single-Family, or two attached, detached, or stacked dwelling units, and related demolition and land surface modification applications	Major <sup>(2)(3)</sup> Single-Family, or two attached, detached, or stacked dwelling units, and related demolition and land surface modification applications	Multifamily, Commercial, any other use other than residential, and related demolition and land surface modification applications	Short Plat, Subdivisions, cottages, carriage units, two/three-unit homes, and related demolition and land surface modification applications (see KZC 95.30(6)(a), Phased Review, for additional standards)
<b>Required Components</b>				
<b>TREE INVENTORY AS DESCRIBED IN KZC 95.30(4)(a) FOR:</b>				
All significant trees on the subject property		X	X	X
Significant trees potentially impacted by proposed development activity	X			
<b>SITE PLAN AS DESCRIBED IN KZC 95.30(4)(b) TO INCLUDE:</b>				
Surveyed tree locations if required by the Planning Official		X	X	

Development Activity	Minor <sup>(1)(3)</sup> – Single-Family, or two attached, detached, or stacked dwelling units, and related demolition and land surface modification applications	Major <sup>(2)(3)</sup> Single-Family, or two attached, detached, or stacked dwelling units, and related demolition and land surface modification applications	Multifamily, Commercial, any other use other than residential, and related demolition and land surface modification applications	Short Plat, Subdivisions, cottages, carriage units, two/three-unit homes, and related demolition and land surface modification applications (see KZC 95.30(6)(a), Phased Review, for additional standards)
Required Components				
Surveyed tree locations				X
A final landscape plan showing retained trees			X	
<b>REQUIREMENTS IN KZC 95.30(4)(c) SHALL BE PREPARED BY A QUALIFIED PROFESSIONAL AND APPLY TO:</b>				
Significant trees within required yards or within 10 feet of any side property line		X		
Significant trees potentially impacted by proposed development activity as determined by the Planning Official			X	
Proposed removal of trees with a high retention value in required landscaping areas			X	
All significant trees				X
<b>TREE RETENTION STANDARDS</b>				
Applicant is encouraged to retain viable trees	X <sup>(4)</sup>			
Retain and protect trees with a high retention value to the maximum extent possible		X <sup>(4)</sup>	X <sup>(4)</sup>	X <sup>(4)</sup>
Retain and protect trees with a moderate retention value if feasible		X	X	X
Preservation and maintenance agreements pursuant to KZC 95.51 are required for all remaining trees on the subject property	X	X	X	X <sup>(5)</sup>
<b>TREE DENSITY</b>				
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			
<b>LANDSCAPING</b>				
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 (6)(a) of this section, Phased Review, applies.

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

(5) Prior to short plat or subdivision recording.

6. Additional Tree Retention Plan Standards for Short Plats 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 this section.

3) Phased review of Tree Retention Plans is not permitted in the Holmes Point Overlay zone. In the HPO zone, subdivision or short plat applications shall provide a comprehensive review of Tree Retention Plans as outlined in subsections (2) through (5) of this section.

b. Modifications to Tree Retention Plan for Short Plats and Subdivisions. A Tree Retention Plan modification request shall contain information as determined by the Planning Official based on the requirements in subsection (5) of this section, Tree Retention Plan. The fee for processing a modification request shall be established by City ordinance.

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

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

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

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

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.

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

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

- b) The modification is necessary because of special circumstances which are not the result of actions by the applicant regarding the size, shape, topography, or other physical limitations of the subject property relative to the location of proposed and/or existing improvements on or adjacent to the subject property;
- c) There is no practicable or feasible alternative development proposal that results in fewer additional tree removals;
- d) The Hearing Examiner shall not approve or deny a modification pursuant to this section without the Planning Official 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 Hearing Examiner; and
- e) Said comment period shall not be less than 14 calendar days.

(Ord. 4619 § 1, 2017; Ord. 4437 § 1, 2014; Ord. 4252 § 1, 2010; Ord. 4238 § 2, 2010; Ord. 4010 § 2, 2005)

### **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 or moderate 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 (1) 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, side or rear required yards; provided, that:
  - a. No required side yard shall be less than five (5) feet; and
  - b. The required front yard shall not be reduced by more than five (5) feet in residential zones. There shall not be an additional five (5) feet of reduction beyond the allowance provided for covered entry porches;
  - c. Rear yards that are not directly adjacent to another parcel's rear yard but that are adjacent to an access easement or tract may be reduced by five (5) feet;
  - d. No required yard shall be reduced by more than five (5) feet in residential zones.
4. **Storm Water.** 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, 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.

(Ord. 4547 § 1, 2016; Ord. 4350 § 1, 2012; Ord. 4238 § 2, 2010)

**95.33 Tree Density Requirement**

The required minimum tree density is 30 tree credits per acre for single-family homes, cottages, carriage units, two/three-unit homes, 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 tree’s retention value, supplemental trees or a combination of existing and supplemental trees pursuant to subsection (2) of this section. Existing trees transplanted to an area on the same site shall not count toward the required density unless approved by the Urban Forester based on transplant specifications provided by a qualified professional that will ensure a good probability for survival.

1. Tree Density Calculation. In calculating tree density credits, tree credits may be rounded up to the next whole number from a 0.5 or greater value. For the purpose of calculating required minimum tree density, public right-of-way, areas to be dedicated as public right-of-way, and vehicular access easements not included as lot area with the approved short plat shall be excluded from the area used for calculation of tree density.

Tree density calculation for existing individual trees:

- a. Diameter breast height (DBH) of the tree shall be measured in inches.
- b. The tree credit value that corresponds with DBH shall be found in Table 95.33.1. Existing native conifers (or other conifer species as approved by the Urban Forester) shall count 1.5 times credits for retention.

**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 (5) tree credits ( $7,200/43,560 = 0.165 \times 30 = (4.9)$  or five (5)). The tree density for the lot could be met by retaining one (1) existing 16-inch deciduous tree and one (1) existing 6-inch deciduous tree on site. The same 7,200-square-foot lot would meet the required five (5) tree credits by retaining one (1) existing 14-inch conifer.

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 storm water 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 – The area of the subject property that is within 10 feet from the property line.
    - 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 (1) tree credit shall be six (6) feet tall for Thuja/Arborvitae or four (4) feet tall for native or other conifers and 2-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 95.50 and 95.51 respectively.

(Ord. 4547 § 1, 2016; Ord. 4238 § 2, 2010)

#### **95.34 Tree and Soil Protection during Development Activity**

Prior to development activity or initiating tree removal on the site, vegetated areas, individual trees and soil 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 stockpiling any materials, 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, groups of trees, vegetation and native soil. Fences shall be constructed of chain link and be at least six (6) 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 and Soil Protection Area, Entrance Prohibited” and provide the City phone number for code enforcement to report violations.
  - c. Prohibit excavation or compaction of soil 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 machinery from outside the protected zone or by hand.
  - f. In addition to the above, the Planning Official may require the following:
    - 1) If equipment is authorized to operate within the protected zone, the soil and critical root zone of a tree must be covered with mulch to a depth of at least six (6) inches or with plywood, steel plates or similar material in order to protect roots and soil from damage caused by heavy equipment.
    - 2) Minimize root damage by hand-excavating a 2-foot-deep trench, at edge of critical root zone, to cleanly sever the roots of trees to be retained. Never rip or shred roots with heavy equipment.
    - 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 (1/2) 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 soil erosion and 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.

(Ord. 4547 § 1, 2016; Ord. 4238 § 2, 2010)

#### **95.40 Required Landscaping**

1. User Guide. Chapters 15 through 56 KZC containing the use zone or development standards tables 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 or development standards tables.

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 or development standards tables, in Chapters 15 through 56 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, Critical Areas, addresses vegetation within critical areas and critical area buffers.
  - d. Chapter 110 KZC and Chapter 19.36 KMC address vegetation within rights-of-way, except for the I-405 and SR-520 rights-of-way, and the Cross Kirkland Corridor railbanked rail corridor or the Eastside Rail Corridor.
  - 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 95.30(3), Tree Retention Plan Procedure, and KZC 95.32, Incentives and Variations to Development Standards, to retain existing native trees, vegetation and soil in areas subject to the landscaping standards of this section. The Planning Official shall give substantial weight to the retained native 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 95.34 to ensure the protection of significant existing vegetation and soil.
3. Landscape Plan Required. In addition to the Tree Retention Plan required pursuant to KZC 95.30, 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 95.50 and 95.51. Plant materials shall be identified with both their scientific and common names. Any required irrigation system must also be shown.

(Ord. 4551 § 4, 2017; Ord. 4547 § 1, 2016; Ord. 4476 § 3, 2015; Ord. 4408 § 1, 2013; Ord. 4238 § 2, 2010; Ord. 4121 § 1, 2008; Ord. 4097 § 1, 2007; Ord. 4037 § 1, 2006; Ord. 4030 § 1, 2006; Ord. 4010 § 2, 2005)

#### **95.41 Supplemental Plantings**

1. General. The applicant shall provide the supplemental landscaping specified in subsection (2) 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 (2) 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. Preference is given to using native plant species. See Kirkland Native Tree/Plant Lists.
- b. One (1) tree for each 1,000 square feet of area to be landscaped. At the time of planting, deciduous trees must be at least two (2) inches in caliper and coniferous trees must be at least five (5) feet in height.
- c. If a development requires approval through Process I, IIA or IIB as described in Chapters 145, 150 and 152 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 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.

(Ord. 4547 § 1, 2016; Ord. 4238 § 2, 2010)

**95.42 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 subsection (1) (Buffering Standard 1)	Must comply with subsection (1) (Buffering Standard 1)	Must comply with subsection (2) (Buffering Standard 2)	
B		Must comply with subsection (1) (Buffering Standard 1)	Must comply with subsection (1) (Buffering Standard 1)		
C		Must comply with subsection (1) (Buffering Standard 1)	Must comply with subsection (2) (Buffering Standard 2)		
D		Must comply with subsection (2) (Buffering Standard 2)			
E					
<b>Footnotes:</b>	*If the adjoining property is zoned Central Business District, Juanita Business District, North Rose Hill Business District, Rose Hill Business District, Finn Hill Neighborhood Center, Houghton/Everest Neighborhood Center, Business District Core or is located in TL 5, this section KZC 95.42 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 6-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 (1) tree per 20 linear feet of land use buffer, with deciduous trees of two and one-half (2-1/2) inch caliper, minimum, and/or coniferous trees eight (8) 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 (2) years, planted at the following sizes and spacing, depending on type:
    - 1) Low shrub – (mature size under three (3) feet tall), 1- or 2-gallon pot or balled and burlapped equivalent;
    - 2) Medium shrub – (mature size from three (3) to six (6) feet tall), 2- or 3-gallon pot or balled and burlapped equivalent;
    - 3) Large shrub – (mature size over six (6) feet tall), 5-gallon pot or balled and burlapped equivalent.
  - c. Living ground covers planted from either 4-inch pot with 12-inch spacing or 1-gallon pot with 18-inch spacing to cover within two (2) 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 5-foot-wide landscaped strip with a 6-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 (1) row of trees planted no more than 10 feet apart on center along the entire length of the buffer, with deciduous trees of 2-inch caliper, minimum, and/or coniferous trees at least six (6) feet in height, minimum. At least 50 percent of the required trees shall be evergreen.
  - b. Living ground covers planted from either 4-inch pot with 12-inch spacing or 1-gallon pot with 18-inch spacing to cover within two (2) 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 (1) 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 (1) 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.

(Ord. 4637 § 3, 2018; Ord. 4636 § 3, 2018; Ord. 4495 § 2, 2015; Ord. 4238 § 2, 2010)

#### **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 (6) feet above finished grade, and do not extend outward from the fence or structure more than five (5) 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 (5) feet if a clearly defined walking path at least three (3) 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 KZC 95.45(1); and provided further, that the exemptions of KZC 95.45(2) 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 (1) 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 (7) days.

(Ord. 4547 § 1, 2016; Ord. 4238 § 2, 2010)

#### **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 (8) parking stalls.

1. The parking lot must contain 25 square feet of landscaped area per parking stall planted as follows:
  - a. The applicant shall arrange the required landscaping throughout the parking lot to provide landscape islands or peninsulas to separate groups of parking spaces (generally every eight (8) 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 6-inch-high vertical curb and be of similar dimensions as the adjacent parking stalls. Gaps in curbs are allowed for stormwater runoff to enter landscape island.

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

- 1) At least one (1) deciduous tree, two (2) inches in caliper, or a coniferous tree five (5) feet in height.
- 2) Groundcover shall be selected and planted to achieve 60 percent coverage within two (2) years.
- 3) Natural drainage landscapes (such as rain gardens, bio-infiltration swales and bioretention planters) are allowed when designed in compliance with the stormwater design manual adopted in KMC 15.52.060. Internal parking lot landscaping requirements for trees still apply. Refer to Public Works Pre-Approved Plans.

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

2. 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 (1) planter that is 30 inches deep and five (5) feet square must be provided for every eight (8) 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.

3. 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.

(Ord. 4547 § 1, 2016; Ord. 4350 § 1, 2012; Ord. 4238 § 2, 2010)

#### **95.45 Perimeter Landscape Buffering for Driving and Parking Areas**

1. Perimeter Buffering – General. Except as specified in subsection (2) of this section, the applicant shall buffer all parking areas and driveways from abutting rights-of-way and from adjacent property with a 5-foot-wide strip along the perimeter of the parking areas and driveways planted as follows (see Figure 95.45.A):

- a. One (1) row of trees, two (2) 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 (2) years.
- c. Natural drainage landscapes (such as rain gardens, bio-infiltration swales and bioretention planters) are allowed when designed in compliance with the stormwater design manual adopted in KMC 15.52.060. Perimeter landscape buffering requirements for trees in driving and parking areas still apply. Refer to Public Works Pre-Approved Plans.

2. Exception. The requirements 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 (1) 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 (1) or a combination of the following methods (see Figures 95.45.A, B, and C):
- a. By providing a landscape strip at least five (5) feet wide planted consistent with subsection (1) of this section, or in combination with the following. In the RHBD Regional Center (see KZC Figure 92.05.A) a 10-foot perimeter landscape strip along NE 85th Street is required planted consistent with subsection (1) of this section.
  - b. The hedge or wall must extend at least two (2) feet, six (6) inches, and not more than three (3) 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 (5) 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 in KZC 95.42, Land Use Buffering Standards, and by this subsection, the applicant shall utilize the more stringent buffering requirement.

**Perimeter Parking Lot Landscaping**

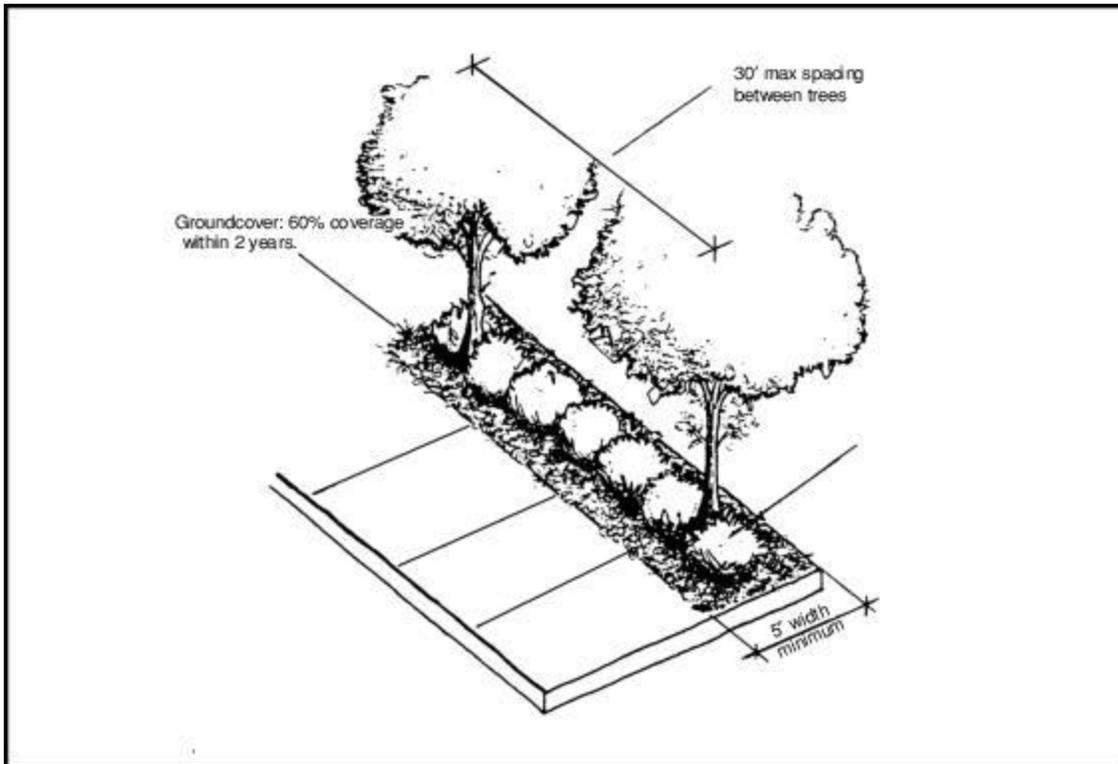


FIGURE 95.45.A

**Perimeter Parking – Examples of Various Screen Wall Designs**

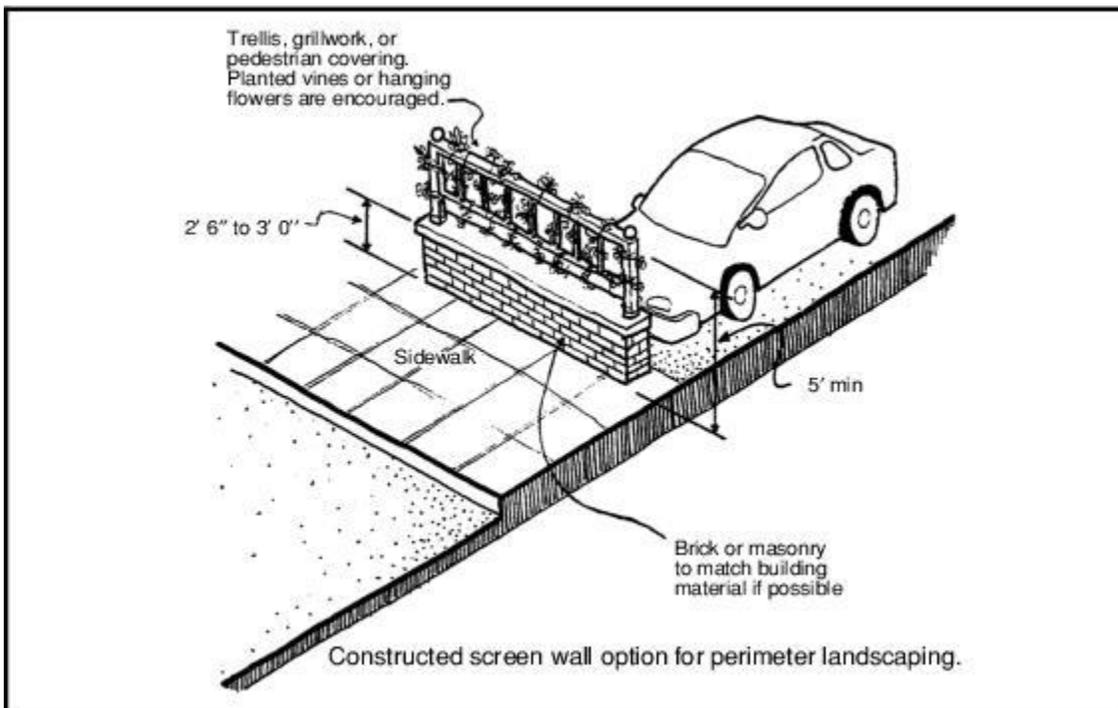


FIGURE 95.45.B

**Perimeter Parking – Examples of Various Screen Wall Designs**

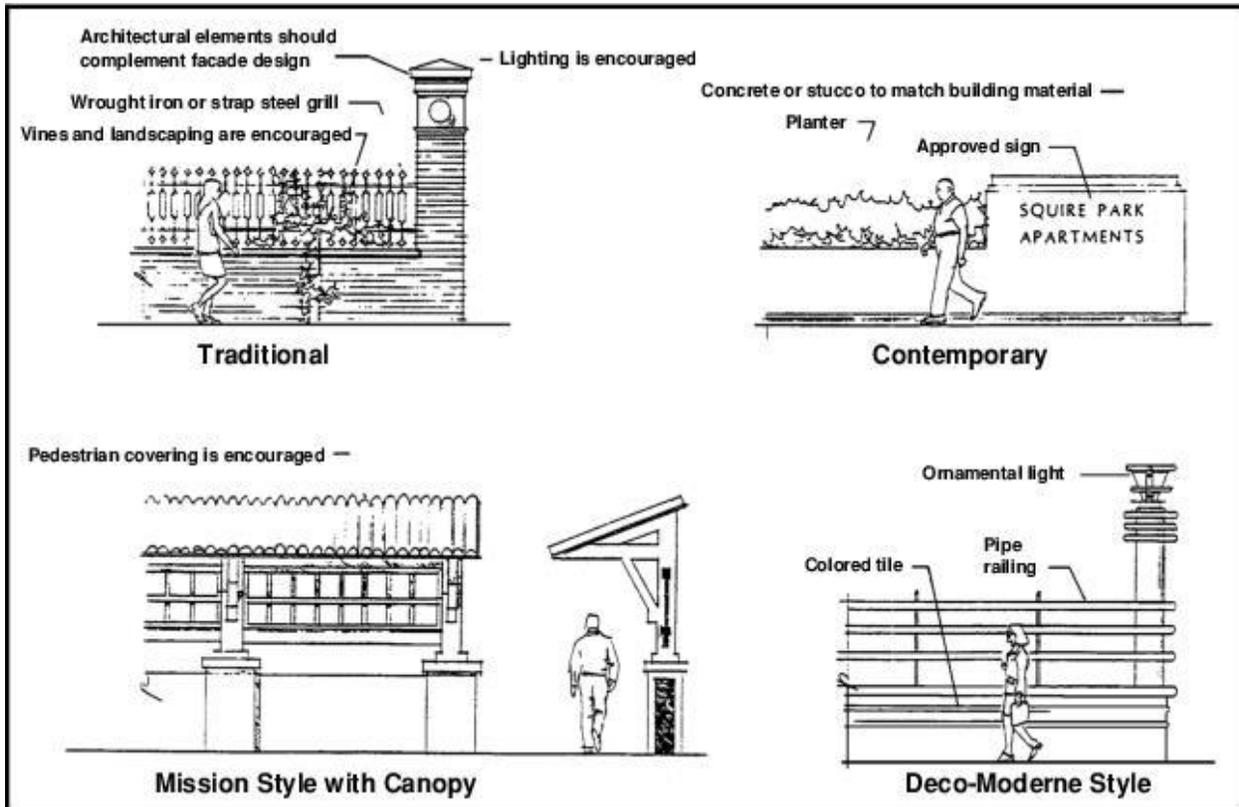


FIGURE 95.45.C

(Ord. 4547 § 1, 2016; Ord. 4238 § 2, 2010; Ord. 4010 § 2, 2005)

**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 in KZC 95.42. The Planning Official may approve a modification if:

- a. The owner of the adjoining property agrees to this in writing; and
- b. The existing topography or other characteristics of the subject property or the adjoining property, or the distance of development from the neighboring property decreases or eliminates the need for buffering; or
- c. The modification will be more beneficial to the adjoining property than the required buffer by causing less impairment of view or sunlight; or
- d. The Planning Official determines that it is reasonable to anticipate that the adjoining property will be redeveloped in the foreseeable future to a use that would require no, or a less intensive, buffer; or
- 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, or IIB, described in Chapters 142, 145, 150, and 152 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 applicable criteria listed in subsections (2)(b) and (2)(c) of this section. If granted under Design Review or Process I, IIA, or IIB, the modification is binding on the City for all development permits issued for that development under the building code within five (5) 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 KZC 95.45; or
- 4) The modification eliminates the portion of the buffer that would divide a shared parking area serving two (2) or more adjacent uses, but provides the buffer around the perimeter of the shared parking area.

(Ord. 4547 § 1, 2016; Ord. 4238 § 2, 2010)

#### **95.47 Nonconforming Landscaping and Buffers**

1. The landscaping requirements of KZC 95.41, Supplemental Plantings, KZC 95.43 Outdoor Use, Activity and Storage, KZC 95.44, Internal Parking Lot Landscaping, and KZC 95.45, Perimeter Landscape Buffering for Driving and Parking Areas, 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 KZC 95.42 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.

(Ord. 4547 § 1, 2016; Ord. 4238 § 2, 2010)

### **95.50 Installation Standards for Required Plantings**

All required trees, landscaping and soil 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 Recorder's Office.

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 (6) 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 (2) horizontal feet to one (1) vertical foot (2:1).
4. Soil Specifications. Soils in planting areas shall have soil quality equivalent to Washington State Department of Ecology BMP T5.13. The soil quality in any landscape area shall comply with the soil quality requirements of the Public Works Pre-Approved Plans. See subsection (9) 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 Planning and Building Department.
  - 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 ensure 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 (1) 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 (1/2) 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 (2) 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 (6) 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.

(Ord. 4551 § 4, 2017; Ord. 4547 § 1, 2016; Ord. 4491 §§ 3, 11, 2015; Ord. 4350 § 1, 2012; Ord. 4238 § 2, 2010; Ord. 4010 § 2, 2005)

#### **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 of the property owner to maintain street trees abutting their property pursuant to KZC 95.21.
2. Maintenance Duration. Maintenance shall be ensured in the following manner except as set forth in subsections (3), (4) and (5) 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 (5) years following issuance of the certificate of occupancy for the individual lot or development. After five (5) years, all trees on the property are subject to KZC 95.23 unless:

- 1) The tree and associated vegetation are in a grove that is protected pursuant to subsection (3) of this section; or
- 2) The tree or vegetation is considered to be a public benefit related to approval of a planned unit development; or
- 3) The tree or vegetation was retained to partially or fully meet requirements of KZC 95.40 through 95.45, required landscaping.

3. Maintenance of Preserved Grove. Any applicant who has a grove of trees identified for preservation on an approved Tree Retention Plan pursuant to KZC 95.30(2) shall provide prior to occupancy the legal instrument acceptable to the City to ensure preservation of the grove and associated vegetation in perpetuity, except that the agreement may be extinguished if the Planning Official determines that preservation is no longer appropriate.

4. Maintenance in Holmes Point Overlay Zone. Vegetation in designated Protected Natural Areas in the Holmes Point Overlay Zone is to be protected in perpetuity pursuant to KZC 70.15(8)(a). Significant trees in the remainder of the lot shall be protected in perpetuity pursuant to KZC 70.15(8)(b).

5. Nonnative Invasive and Noxious Plants. It is the responsibility of the property owner to remove nonnative 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. 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.

(Ord. 4551 § 4, 2017; Ord. 4437 § 1, 2014; Ord. 4238 § 2, 2010)

#### **95.52 Prohibited Vegetation**

Plants listed as prohibited in the Kirkland Plant List shall not be planted in the City or required to be retained.

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.

(Ord. 4450 § 1, 2014; Ord. 4238 § 2, 2010; Ord. 4121 § 1, 2008)

#### **95.55 Enforcement and Penalties**

Upon determination that there has been a violation of any provision of this chapter, the City may pursue code enforcement and penalties in accordance with the provisions of Chapter 1.12 KMC, Code Enforcement.

(Ord. 4286 § 1, 2011; Ord. 4281 § 1, 2011; Ord. 4238 § 2, 2010; Ord. 4010 § 2, 2005)

#### **95.57 City Forestry Account**

1. Funding Sources. All civil penalties received under this chapter and all money received pursuant to KZC 95.33(3)(c) 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. Establishment of a holding public tree nursery;
  - d. Urban forestry education;
  - e. Implementation of a tree canopy monitoring program; or
  - f. Other purposes relating to trees as determined by the City Council.

(Ord. 4238 § 2, 2010)



Update #	KZC 95. —	Subsection	POTENTIAL KZC 95 CODE AMENDMENTS with NO/MINOR POLICY IMPACT	Policy Level	Updated?
1	21	2	<del>Add 'per ANSI standard...'</del> added 'topping' definition per ANSI standard to 95.10	None	yes
2	23	2	Add to end of sentence '...without permission.'	None	yes
3	23	3	Clarify "notification" in 3, 5 rather than repeating 2x	None	yes
4	30	4	Delete 'tree type' replace with 'Identify by tree species and/or common name.' Confusing - applicants think they need to type tree by retention value	None	yes
5	30	4	Clarify requirements between 2-5 for LOD, CRZ, fence location, tree protection zone, etc.	None	yes
6	30	4	Add language on project sequencing, IDPs. Include landscaping/other activity within CRZ	None	yes
7	50	5	Typo - revise 1st sentence to read: 'plants listed in the Kirkland Prohibited Plant list shall not be planted in required landscaping areas.'	None	yes
8	51	1	Revise last sentence for consistency with 95.21 (ROW tree maintenance responsibilities, adjacent property owners)	None	n/a
9	51	2	Distinguish between a) and b) 3 (housing/development types). <del>Add to b 'part of an IDP'</del>	None	yes
10	23		<del>Typo in 2nd sentence, "and" should be "or". See Susan's email of 10/31/14</del>	Minor	n/a
11	10	14	Multiple trunk tree measurement - codify?	Minor	yes
12	5	2	Add 'manage trees and other vegetation consistent with industry standards' (ISA, ANSI, etc.)	Minor	yes
13	10	9	Clarify tree protection definitions per ISA/ANSI standards	Minor	yes
14	10	12	Replace 'TRACE' with 'TRAO' for qualified professional standards	Minor	yes
15	10		Add topping definition per ISA/ANSI standards	Minor	yes
16	23	5	<del>Add 'Holmes Point Overlay Zone' after shoreline jurisdiction and critical areas</del>	Minor	n/a
17	23	5	Revise 'is not obvious' to 'is evident in a photograph'	Minor	yes
18	23	5	Delete 'street,' replace with 'public' trees, add '...including streets, Parks...'	Minor	yes
19	30	1	3rd paragraph - clarify minimum tree density is in addition to High Retention Value trees	Minor	yes
20	30	3	<del>Include lot line adjustments and applicable rezone process</del>	Minor	yes
21	30	5	<del>Under "Req'ments in KZC..." 1st row inconsistent with 95.30.4a(1) -- address in either section</del>	Minor	yes
22	30	5	Clarify IDP vs. phased review modifications if not addressed by Sean's code revision	Minor	yes
23	32		Revise 1st paragraph, 1st sentence to incentivize applicants	Minor	yes
24	33	4	Remove Arborvitae (LID/O-4547 added Thuja/Arborvitae to code, which was inconsistent with department practice). See e-mail "Arborvitae...", PC 8/9/18	Minor	yes
25	34		1st paragraph - reference ISA/ANSI standards for tree protection during development activity	Minor	yes
26	34	2	Revise LOD/critical root zone for consistency in 1 and 2	Minor	yes
27	34	3	Revise LOD/critical root zone for consistency in a-d	Minor	yes

28	40	2	<b>Add at end of last sentence '...with preference to native vegetation species'.</b>	Minor	yes
29	41	2	Add '...with preference to native vegetation species:' Add to last sentence 'i.e. mulch'	Minor	yes
30	51	5	Reference Prohibited Plant List, King County and WA Weed Agencies. Per GKP, add 'remove ivy'	Minor	yes
31	52		<b>Revise 1st sentence to '...listed on the Kirkland Prohibited Plant List shall not be...'</b>	Minor	yes
32			Simplify or rename 'tree density credits'/point system so it's not as confusing	Minor	not yet
33	50	5	Delete 'Natural Resource Management Team', replace with 'on the PBD webpage'. Add language to encourage species diversity by planting other than listed with Planning Official approval.	Minor	yes
34	30	6	Clearly specify IDP areas for tree retention (i.e.: "building envelope") MB 8/23/18	Minor	not yet
35	23	3	Clarify public and street tree removal requirements HCC 8/27/18	Minor	not yet
36	30		Update to reflect current types of housing HCC 8/27/18	Minor	not yet
37	50	5	Add language to avoid planting large trees under/within proximity to overhead utilities	Minor	yes
39	30	6	IDP modifications explanation (addressed with Minor Code Amendment #34	Minor	
50	20	1	<b>First sentence add "...without previously obtaining a permit." Revise section for clarity/simplicity</b>	Minor	
51	21	1	Address inconsistency with KMC 1.12. Add "within reason" and "allows" language. (Define) minor pruning OK for adjacent property owners	Minor	

Lined out entries - were addressed by the Planning & Building Department under previous minor code amendments

Potential Code Amendments with No/Minor Policy Impact - only relevant code sections are shown below:

#### 95.05.2 (h)

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:

**h. Manage trees and other vegetation in a manner consistent with the City's [Urban Forest Strategic Natural Resource-Management Plan](#) and [industry standards and best management practices established by the International Society of Arboriculture \(ISA\) and the American National Standards Institute \(ANSI\)](#).**

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.

1. Caliper – The ~~industry American Association of Nurserymen~~ standard for trunk measurement of nursery stock, applicable to supplemental required trees. Caliper ~~of the trunk~~ shall be ~~the trunk diameter~~ measured six (6) inches above the ground for up to and including 4-inch caliper ~~trunk sizes and 12 inches above the ground for larger sizes~~.
2. Critical Root Zone – The area ~~extending surrounding a tree at a distance from the trunk, which is equal to~~ one (1) foot ~~beyond the trunk~~ for every inch of ~~DBH per the International Society of Arboriculture standard~~. Example: a 24-inch DBH tree has a 24-foot Critical Root Zone. ~~trunk diameter measured at 4.5 feet from grade or otherwise determined by a qualified professional (example: one (1) foot radius per one (1) inch DBH)~~.
9. Limit of Disturbance – The boundary between the ~~Tree Protection Zone protected area around a tree~~ and the allowable site disturbance as determined by a qualified professional, measured in feet from the trunk. Limit of Disturbance denotes the location of tree protection fencing.
12. Qualified Professional – An individual with relevant education and training in arboriculture or urban forestry, having two (2) or more of the following credentials:
  - **International Society of Arboriculture (ISA) Certified Arborist;**
  - **Tree Risk Assessor Qualification Certification (TRAQCE)** as established by the ~~Pacific Northwest Chapter of~~ ISA (or equivalent);
  - **American Society of Consulting Arborists (ASCA) registered Consulting Arborist;**
  - **Society of American Foresters (SAF) Certified Forester for Forest Management Plans;**

For tree retention associated with a development permit, a qualified professional must have, in addition to the above credentials, a minimum of **three (3) years' experience working directly with the protection of trees during construction and have experience with the likelihood of tree survival after construction**. A qualified professional must also be able to prescribe appropriate measures for the preservation of trees during land development.

14. Significant Tree – A tree that is at least six (6) inches in diameter at breast height (DBH) as measured at 4.5 feet from the ground. Trees with multiple trunks shall be measured per the industry standard outlined in the Guide for Plant Appraisal 10<sup>th</sup> Edition, Council of Tree and Landscape Appraisers.
- ~~xx. Topping – The reduction of a tree's size using heading cuts that shorten limbs or branches back to a predetermined crown limit. Topping is not an acceptable pruning practice and is not appropriate on established trees.~~
- ~~xx. Tree Protection Zone (TPZ) is an arborist-defined area surrounding a tree trunk intended to protect individual trees, groups of trees, vegetation, roots and soil from construction-related activities. Determining TPZ size may include Critical Root Zone, dripline, or root plate diameter methodologies or exploratory root excavations.~~

#### 95.21 Tree Pruning

2. Tree Pruning on Private Property. A permit is not required to prune trees on private property. Topping or Ppruning which results in the removal of at least half of the live crown will be considered tree removal and subject to the provisions in KZC 95.23.

### 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 for Removal of Trees on Private Property ~~and/or~~ City Right-of-Way. It is unlawful for any person (other than City crews) to remove, prune, trim, modify, alter or damage a tree in a public park or on any other City property without permission.

No person, directly or indirectly, shall remove any significant tree on any private property within the City, or any public tree in parks and 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 or subsection (5) of this section.

3. Tree Removal Permit Application Form. The ~~applicable City Planning and Building Department and Public Works~~ Department shall establish and maintain a tree removal permit application form. The form shall be used for 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:

5. Tree Removal Allowances.

a. Except in the Holmes Point Overlay zone, any private property owner of developed property may remove up to two (2) significant trees from their property within a 12-month period without having to apply for a tree removal permit; provided, that:

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

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

d. Removal of Hazard or Nuisance Trees. Any private property owner seeking to remove any number of significant trees which are a hazard or nuisance from developed or undeveloped property or the public right-of-way shall first obtain approval of a tree removal permit and meet the requirements of this subsection.

1) Tree Risk Assessment. If the nuisance or hazard condition is not evident in a photographobvious, a tree risk assessment prepared by a qualified professional explaining how the tree(s) meet the definition of a nuisance or hazard tree is required. 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.

2) Trees in Critical Areas or Critical Areas Buffers. See Chapter 90 KZC.

3) The removal of any tree in the Holmes Point Overlay Zone requires the planting of a native tree of a minimum of six (6) feet in height in close proximity to where the removed tree was located. Selection of native species and timing of installation shall be approved by the Planning Official.

4) PublicStreet Trees. PublicStreet trees may only be removed if determined to be a hazard or nuisance. If the removal request is for publicstreet trees, including trees in rights of way, parks and other City facilities, the appropriate Department 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** or other capital projects. The City shall require a one-for-one tree replacement in a suitable location.

#### 95.30 Tree Retention Associated with Development Activity

1. Introduction. **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. To that end, the City requires approval of a tree retention plan in conjunction with all development permits resulting in site disturbance and for any tree removal on developed sites not exempted by KZC 95.20. This section includes provisions that allow development standards to be modified in order to retain viable significant trees.

A minimum tree density approach is being used in combination with priorities for retention to retain as many viable trees as possible with new development activity. The requirement to meet a minimum tree density applies to new single-family homes, cottages, carriage units, two/three-unit homes, 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 required tree density.

Priorities for retention are assessed in subsection 3 of this section and in KZC 95.10, Definitions. 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.

4. Tree Retention Plan Components. The tree retention plan shall contain the following information as specified in the chart in subsection (5) of this section, unless waived by the Planning Official:

a. A tree inventory with containing the following:

4) A numbering system of all existing significant trees on the subject property (~~with corresponding to~~ tags on trees). ~~The inventory must also include significant trees on adjacent properties that appear to have with Critical Root Zones (CRZ) driplines extending onto~~ the subject property line;

2) The distance in feet for Critical Root Zones (CRZ) and proposed Limits of ~~Disturbance~~ (LOD) of all existing significant trees (including approximate distance in feet for CRZ and LOD of off-site trees with overhanging CRZs extending onto the subject property driplines);

3) Size (DBH);

4) Proposed tree status (trees to be 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/or common name.
- b. A site plan ~~showing~~depicting the following:
- 2) Accurate location of significant trees on the subject property (surveyed locations may be required). The site plan must also ~~show~~include the approximate trunk location ~~and critical root zone~~ of significant trees that are on adjacent properties ~~iesy~~ with CRZs~~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 the proposed ~~L~~imits of ~~D~~isturbance and the Critical Root Zone drawn to scale around all trees potentially impacted by site disturbances resulting from grading, demolition, or construction activities (including approximate LOD of off-site trees with CRZs extending over property lines~~overhanging driplines~~);
  - 6) Trees ~~P~~roposed ~~tree status (trees to be removed, or retained)~~ **noted by an 'X' or by ghosting out;**
  - 7) Proposed locations of any existing or supplemental trees ~~and any~~ required ~~trees in order~~ to meet tree density or minimum number of trees as outlined in KZC 95.33.
- c. An arborist report to include ~~containing~~ the following:
- 1) A complete description of each tree's health, condition, and viability (including off-site trees that may be potentially impacted by site disturbances);**
  - 2) A description of the method(s) used to determine the ~~L~~imits of ~~D~~isturbance (i.e., Critical Root Zone formula, root plate diameter, exploratory root excavations or a case-by-case basis description for individual trees);
  - 3) Any special instructions specifically outlining any work proposed within the Critical Root Zone~~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 (wind firmness), or unsuitability 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 ~~description~~discussion of project sequencing related to the timing and installation of tree protection measures, including landscaping and other activity within the Critical Root Zone of retained trees that must include fencing and be in accordance with the tree protection standards as outlined in KZC 95.34; and
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 <sup>(1)(3)</sup> – Single-Family, or two attached, detached, or stacked dwelling units, and related demolition and land surface modification applications	Major <sup>(2)(3)</sup> Single-Family, or two attached, detached, or stacked dwelling units, and related demolition and land surface modification applications	Multifamily, Commercial, any other use other than residential, and related demolition and land surface modification applications	Short Plat, Subdivisions, cottages, carriage units, two/three-unit homes, and related demolition and land surface modification applications (see KZC 95.30(6)(a), Phased Review, for additional standards)
<b>TREE INVENTORY AS DESCRIBED IN KZC 95.30(4)(a) FOR:</b>				
All significant trees on the subject property		X	X	X
Significant trees potentially impacted by proposed development activity	X			
<b>SITE PLAN AS DESCRIBED IN KZC 95.30(4)(b) TO INCLUDE:</b>				
Surveyed tree locations if required by the Planning Official		X	X	
Surveyed tree locations				X
A final landscape plan showing retained trees			X	
<b>REQUIREMENTS IN KZC 95.30(4)(c) SHALL BE PREPARED BY A QUALIFIED PROFESSIONAL AND APPLY TO:</b>				
Significant trees within required yards or within 10 feet of any side property line		X		
Significant trees potentially impacted by proposed development activity as determined by the Planning Official			X	
Proposed removal of trees with a high retention value in required landscaping areas			X	
All significant trees				X
<b>TREE RETENTION STANDARDS</b>				
Applicant is encouraged to retain viable trees	X <sup>(4)</sup>			
Retain and protect trees with a high retention value to the maximum extent possible		X <sup>(4)</sup>	X <sup>(4)</sup>	X <sup>(4)</sup>
Retain and protect trees with a moderate retention value if feasible		X	X	X
Preservation and maintenance agreements pursuant to KZC 95.51 are required for all remaining trees on the subject property	X	X	X	X <sup>(5)</sup>
<b>TREE DENSITY</b>				

Development Activity  Required Components	Minor <sup>(1)(3)</sup> – Single-Family, or two attached, detached, or stacked dwelling units, and related demolition and land surface modification applications	Major <sup>(2)(3)</sup> Single-Family, or two attached, detached, or stacked dwelling units, and related demolition and land surface modification applications	Multifamily, Commercial, any other use other than residential, and related demolition and land surface modification applications	Short Plat, Subdivisions, cottages, carriage units, two/three-unit homes, and related demolition and land surface modification applications (see KZC 95.30(6)(a), Phased Review, for additional standards)
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			
<b>LANDSCAPING PER ZONING/LAND USE</b>				
Preserved trees in required landscaping areas shall apply toward required landscaping requirements			X	

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

a. Phased Review.

1) ~~If the location of all proposed improvements, including the building footprint, utilities, and access was not established 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 known at the time of application. Proposed 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 this section.

3) Phased review of Tree Retention Plans is not permitted in the Holmes Point Overlay zone. In the HPO zone, subdivision or short plat applications shall provide a comprehensive review of Tree Retention Plans as outlined in subsections (2) through (5) of this section.

4) Modifications. A Tree Retention Plan modification request for Phased Review shall contain information as determined by the Planning Official based on the requirements in subsection (5) of this section, Tree Retention Plan. The fee for processing a modification request shall be established by City ordinance.

~~b. Integrated Development Review. Modifications to Tree Retention Plan for Short Plats and Subdivisions. A Tree Retention Plan modification request shall contain information as determined by the Planning Official based on the requirements in subsection (5) of this section, Tree Retention Plan. The fee for processing a modification request shall be established by City ordinance.~~

1) For Tree Retention Plans approved during the short plat or subdivision review process that established the location of all proposed improvements, including the building footprint, utilities, and access with an approved short plat or subdivision review process allow tree removal to occur throughout the site, a modification to the Tree Retention Plan may be approved as follows:

2+) Modification – General. The Planning Official may approve minor modifications to the approved Integrated Development Review Tree Retention Plan in which the minimum tree density credits associated with trees identified for retention are not decreased.

22) Modification Prior to Tree Removal. The Planning Official may approve a modification request to the approved Integrated Development Review Tree Retention Plan to decrease the minimum number of tree density credits associated with trees previously identified for retention if:

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

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

#### 95.32 ~~Incentives and~~ Variations to Development Standards and Incentives to Retain Trees

Applicants are encouraged to ~~In order to retain trees, the applicant should~~ **pursue provisions in Kirkland's codes that allow development standards to be modified to retain trees.** 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.

#### 95.33 Tree Density Requirement

The required minimum tree density is 30 tree credits per acre for single-family homes, cottages, carriage units, two/three-unit homes, 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 shall ~~may~~ **consist of existing trees pursuant to the tree's** retention value, supplemental trees or a combination of existing and supplemental trees pursuant to subsection (2) of this section. Existing trees transplanted to an area on the same site shall not count toward the required density unless approved by the Urban Forester based on transplant specifications provided by a qualified professional that will ensure a good probability for survival.

4. Minimum Size and Tree Density Value for Supplemental Trees. The required minimum size of the supplemental tree worth one (1) tree credit shall be ~~six (6) feet tall for Thuja/Arborvitae or~~ four (4) feet tall for native or other conifers and 2-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 95.50 and 95.51 respectively.

#### 95.34 Tree and Soil Protection during Development Activity

Prior to development activity or initiating tree removal on the site, vegetated areas, individual trees and soil to be preserved shall be protected from potentially damaging activities ~~per ISA and ANSI standards for tree protection during development activity as follows: 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 stockpiling any materials, or dumping concrete washout or other chemicals. During construction, no person shall attach any object to any tree designated for protection.
2. Tree Protection Fence~~Protective Barrier~~. Before development, land clearing, filling or any land alteration, the applicant shall:
  - a. Erect and maintain immovable, readily visible temporary protective tree fencing at along the Limits of Deisturbance which completely surrounds the protected area of all retained trees, groups of trees, vegetation and native soil. Fences shall be constructed of chain link and be at least six (6) 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 Tree Protection Fence~~protective tree fence~~. Said signs must be **approved by the Planning Official and shall state at a minimum "Tree and Soil Protection Area, Entrance Prohibited" and provide the City phone number for code enforcement to report violations.**
- c. Prohibit excavation or compaction of soil or other potentially damaging activities within the fence; ~~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 Tree Protection Fence~~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 machinery from outside the protected zone or by hand.
- f. In addition to the above, the Planning Official may require the following:
  - 1) If equipment is authorized to operate within the Tree Protection ~~protected~~ zone, the soil and Critical Root Zone of a tree must be covered with mulch to a depth of at least six (6) inches or with plywood, steel plates or similar material in order to protect roots and soil from damage caused by heavy equipment.
  - 2) Minimize root damage by hand-excavating a 2-foot-deep trench, at edge of Critical Root Zone, to cleanly sever the roots of trees to be retained. Never rip or shred roots with heavy equipment.

### 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 (1/2) 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 soil erosion and suffocation of the roots.

### 95.40 Required Landscaping per Zoning

- 1. User Guide. Chapters 15 through 56 KZC containing the use zone or development standards tables 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 or development standards tables.**

### 95.41 Supplemental Plantings per Zoning Requirements

- 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 (2) 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, i.e.: mulch. Preference is given to using native plant species. See Kirkland Native Tree/Plant Lists.
  - b. One (1) tree for each 1,000 square feet of area to be landscaped. At the time of planting, deciduous trees must be at least two (2) inches in caliper and coniferous trees must be at least five (5) feet in height, with preference to native vegetation species.

#### 95.42 Minimum Zoning & 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.

#### 95.46 Modifications to Zoning/Land Use Landscaping Standards

1. Modification to Land Use Buffer Requirements. The applicant may request a modification of the requirements of the buffering standards in KZC 95.42. The Planning Official may approve a modification if:

#### 95.47 Nonconforming Zoning/Land Use Landscaping and Buffers

1. The landscaping requirements of KZC 95.41, Supplemental Plantings, KZC 95.43 Outdoor Use, Activity and Storage, KZC 95.44, Internal Parking Lot Landscaping, and KZC 95.45, Perimeter Landscape Buffering for Driving and Parking Areas, must be brought into conformance as much as is feasible, based on available land area, in either of the following situations:

#### 95.50 Installation Standards for Required Plantings

All required trees, landscaping and soil 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.

#### 5. Plant Selection.

a. Plant selection shall be consistent with the appropriate Kirkland Plant Lists, which are shown on the Planning Department webpage~~is produced by the City's Natural Resource Management Team~~ and available in the Planning and Building Department. Species diversity is encouraged by planting species other than those listed, with Planning Official approval.

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. Planting large trees under/within proximity to overhead utilities shall be avoided.

c. ~~Prohibited Materials.~~ Plants listed ~~as prohibited~~ in the Kirkland Prohibited Plant List shall not be planted~~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.

#### 95.51 Tree and Landscape Maintenance Requirements per Land Use/Zoning

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

2. Maintenance Duration. Maintenance shall be ensured in the following manner except as set forth in subsections (3), (4) and (5) of this section:

a. Commercial, Industrial and Multifamily Development. All required landscaping shall be maintained throughout the life of the development. Plants that die must be replaced in kind. Prior to final inspection/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. Single Family Residential Development. Any existing tree or other existing vegetation designated for preservation in a tree retention plan shall be maintained for a period of five (5) years following issuance of the certificate of occupancy for the individual lot or development. After five (5) years, all trees on the property are subject to KZC 95.23 unless:

- 1) The tree and associated vegetation are in a grove that is protected pursuant to subsection (3) of this section; or
- 2) The tree or vegetation is considered to be a public benefit related to approval of a Planned Unit Development; or
- 3) The tree or vegetation was retained to partially or fully meet requirements of KZC 95.40 through 95.45, Required Landscaping per Zoning.

3. Maintenance of Preserved Grove. Any applicant who has a grove of trees identified for preservation on an approved Tree Retention Plan pursuant to KZC 95.30(2) shall provide prior to occupancy the legal instrument acceptable to the City to ensure preservation of the grove and associated vegetation in perpetuity, except that the agreement may be extinguished if the Planning Official determines that preservation is no longer appropriate.

4. Maintenance in Holmes Point Overlay Zone. Vegetation in designated Protected Natural Areas in the Holmes Point Overlay Zone is to be protected in perpetuity pursuant to KZC 70.15(8)(a). Significant trees in the remainder of the lot shall be protected in perpetuity pursuant to KZC 70.15(8)(b).

5. Nonnative Invasive and Noxious Plants. It is the responsibility of the property owner to remove nonnative invasive plants and noxious plants per the City's Prohibited Plant List, King County and Washington Weed Agencies 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 is not injurious to will not harm the tree or other vegetation that the City has required trees and vegetation to be planted or protected.

6. 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 Prohibited Plant List shall not be planted in the City or required to be retained.

Update #	KZC 95. ___	Subsection	POTENTIAL KZC 95 CODE AMENDMENTS with MODERATE/MAJOR POLICY IMPACT	Policy Level	Updated?
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Definitions					
47	10	12	Add ISA Municipal Specialist Certification to credentials	Moderate	
48	10	7	Define 'Hazard' consistent with TRAQ standards/course of action	Moderate	

Tree Removal Allowances					
53	23	5	Adjust tree removal allowance in proportion to varying lot sizes - PC 7/12/18	Moderate	
67			Allow removal of hedges - PC 8/9/18 (address overuse of arborvitae separately in #55)	Major	
76			Address hazard/nuisance tree removal resulting from contagious pests/diseases CAO	Major	
38	30		Add language to prevent tree girdling (see #56, #58)	Moderate	
56	23		<b>Prevent tree girdling/removals that occur to avoid 'High Retention Value'</b> tree requirements - PC 8/9/18	Moderate	
58	23	2	Address tree girdling in 2 <sup>nd</sup> paragraph (see #38, #56)	Major	

Landscaping by Zone					
44	33	3	Add language regarding <b>newly planted tree locations that won't</b> block sidewalks – Public Works	Moderate	
49	34	5	<b>Add "including aftercare" for greater City authority</b>	Moderate	
62	44		Add language regarding tree retention in parking lots. Coordinate with PW on LID features	Major	
74			Promote retention of tree groves, particularly with parking lot design/development - HCC 8/27/18	Major	

Tree Retention with Development					
40	33	1	Limit maximum tree density credits allowed in Table 95.33.1	Moderate	
41	42	-	<del>Clarify intent of buffer (no issue found, most likely addressed by a previous code amendment)</del>	Moderate	n/a
42	-	-	<del>Authority to require tree removal based on species (addressed with prior code update, Prohibited Plant List)</del>	Moderate	n/a
43	25		Add LEED, Green Building Design under 'reviewed by PBD.' Add 'LID features and processes' under reviewed by Public Works Official	Moderate	
45	34	2	Revise tree protection fence requirements - HPO	Moderate	
46	34	2	Revise tree protection sign standards and inspection procedures - HPO	Moderate	
52	42	2	<del>Replace '10 feet apart' with 20 feet or use street tree list for small-medium trees</del>	Moderate	n/a
54	50	7	List aftercare options such as gator bags, irrigation, soil drenches, etc. PC 8/9/18 (see #49 Minor)	Moderate	
55	33	4	Address overuse of arborvitae (allow certain # or % tree credits) - PC 8/9/18	Moderate	
57	50		Specify appropriate locations for trees required to be planted - PC 8/9/18	Moderate	

59	23	5	Prevent girdling/tree removal in anticipation of development permit submittal to avoid 'High Retention Value' tree requirement compliance. Add 'intent to develop' language/time period requirement (see #38, #56)	Major	
60	30		Streamline tree retention/replanting requirements for greater compliance	Major	
61	33	3	Update and clarify the section on payment in lieu of planting new trees	Major	
63	51	3	Update definition and language on preserved grove maintenance	Major	
64	10		Designate trees of merit - HPO, PC 7/12/18	Major	
65			Require Landscape Architect review of Tree Retention Plans - HPO, PC 7/12/18 (see #44, #57 alternatives)	Major	
66			Address poorly located required tree plantings - PC 8/9/18 (same issue as #44 and #57)	Major	
68			Incentivize tree species diversity - PC 8/9/18		
69	10	13	Revise Low Retention Value tree definition to avoid tree removal loophole - PC 8/9/18 (see #60, #64)	Major	
70	30	5.3	Strengthen retention requirements for trees of merit - HPO, PC 8/9/18 (see #60, #64)	Major	
72			Consider how to increase mature tree retention - PC 8/9/18 (see # 60, #64, #70)	Major	
73			Eliminate phased development review, use IDP review process city-wide - PC 8/9/18	Major	
75	30		Use a canopy-based methodology (vs tree credits) for retention/planting requirements - HPO	Major	
77			Increase tree density credit requirements for retention/replanting city-wide - HPO	Major	

Miscellaneous/New					
71			Address alternative energy (wind, solar) conflicts with trees - PC 8/9/18, MB 8/23	?	
78	23		Clearly reference limited tree removal in critical areas – PBD email 10/26/18 (Delete KZC 90.135)	?	
79			Clarify how to measure DBH with multi-trunked trees - staff	Minor	
80			Address multiple references to City authority	No	

~~Lined out entries~~ - were addressed by the Planning & Building Department under prior code amendments

## AGREEMENT FOR CONSERVATION EASEMENT

This Agreement for Conservation Easement ("Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 1998, by and between \_\_\_\_\_ ("Grantor"), and \_\_\_\_\_ ("Grantee"), for the purpose of conservation in perpetuity of the natural character, scenic qualities, and environmental significance of that certain   (tree)   located on Grantor's Property ("Protected Tree").

### RECITALS

A. The Grantor is the owner in fee simple of that certain real property situated in the City of \_\_\_\_\_, King County, Washington, upon which the Protected Tree is situated ("Grantor's Property"). The legal description of Grantor's Property and the exact location of the Protected Tree are contained in EXHIBIT A attached hereto.

B. The Protected Tree is a   (elm, e.g.)   of approximately \_\_\_\_\_ years of age. The Protected Tree is of sufficient age, size, and rarity within the vicinity of the Grantor's Property that it constitutes a significant scenic and natural resource. The Protected Tree's natural and scenic value is of importance to the Grantor, the Grantee, and the general public of King County and the State of Washington.

C. Preservation of the Protected Tree is consistent with the legislatively declared policies of the State of Washington and the King County Comprehensive Plan. The Comprehensive Plan specifically calls for development which promotes protection of the natural environment and conservation of natural resources. The legislature of the State of Washington has declared that it is in the best interest of the State to maintain, preserve, conserve, and assure the use and enjoyment of natural resources and scenic beauty for the well-being of the State and its citizens. RCW 84.34.010.

D. Grantor, as owner of the Protected Tree, is granting the property interests described in this Agreement to Grantee for the purpose of assuring that the significant natural, environmental, and scenic values of the Protected Tree are conserved and maintained forever. These interests constitute real property under RCW 64.04.130.

E. Grantee is a nonprofit nature conservancy corporation as defined in RCW 64.04.130 and RCW 84.34.250, qualifies for tax exemption under 26 U.S.C. § 501(c), and is a "qualified conservation organization" under 26 U.S.C. § 170(h). Grantee has as one of its principal purposes the conservation of natural resources, including but not limited to biological resources, for the enjoyment of the general public. Grantee desires to enforce the conservation purposes of this Agreement and possesses the resources necessary to enforce the rights and obligations granted herein.

NOW, THEREFORE, for the reasons stated above, and in consideration of the promises and covenants herein, and for other good and valuable consideration, the Grantor hereby grants and conveys to the Grantee, and the Grantee accepts, as permitted

by RCW 64.04.130, a perpetual conservation easement consisting of the rights and restrictions set forth herein. Such easement is for the purpose of preserving and protecting in perpetuity the Protected Tree for the enjoyment of the people of the State of Washington.

#### 1. GRANTEE'S RIGHTS

- A. The Grantee shall have the right to preserve and protect in perpetuity the Protected Tree for the benefit and enjoyment of the general public.
- B. The Grantee shall have the right to enter upon the Grantor's Property annually, ten (10) days after receipt of written notice to the Grantor, for the purpose of making a general inspection of the Protected Tree to assure compliance with this Agreement.
- C. The Grantee and other persons approved by the Grantor, may enter upon the Grantor's Property, upon prior arrangement with Grantor, for education and scientific purposes to observe and study the Protected Tree, or for other purposes allowed by Grantor consistent with this Agreement.
- D. The Grantee shall have the right to enter upon the Grantor's Property at such other times as are necessary if there is reason to believe that a violation of this Agreement is occurring, for purposes of enforcing the provisions of this Agreement. Ten (10) days after receipt of written notice to Grantor, Grantee may enter Grantor's property to correct any violations of this Agreement and hold Grantor, and its successors and assigns responsible for the costs of correction.
- E. The Grantee shall be notified by Grantor, in writing, before Grantor exercises any reserved right, the exercise of which may have an adverse impact on the conservation interests associated with the Protected Tree.
- F. Enforcement of the terms and conditions of this Agreement shall be at the discretion of the Grantee, in accordance with Section 5 below. Any forbearance on its behalf to exercise its rights hereunder in the event of any breach of this Agreement by Grantor, its heirs, successors or assigns, or any other person or entity, shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent breach.

## 2. GRANTOR'S RIGHTS AND OBLIGATIONS

- A. Grantor reserves the right to use the Grantor's Property and the Protected Tree for all uses which are consistent with the purpose of this Agreement. Grantor shall continue to be solely responsible for the upkeep and maintenance of the Protected Tree, including maintenance of Grantor's Property in such a condition as necessary to preserve the Protected Tree in a condition consistent with the purposes of this Agreement. Grantor shall also continue to be solely responsible for pruning, trimming and other maintenance of the Protected Tree necessary (1) to control insects and disease, (2) to prevent personal injury and property damage, (3) to maintain the natural and scenic appearance of the Protected Tree, (4) or otherwise to ensure the healthy growth of the Protected Tree. The Protected Tree may be removed only under circumstances described in Section 4 of this Agreement.
- B. Other than as specified herein, this Agreement is not intended to impose any legal, financial or other responsibility on the Grantee or its members, directors, officers, employees, agents, and contractors, or in any way transfer to Grantee any existing obligation of the Grantor as owner of the Protected Tree. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against Grantor's Property and the Protected Tree. If Grantee is ever required to pay any taxes or assessments on its interest in the Protected Tree, Grantor shall reimburse Grantee for the same, with interest.

## 3. UTILITIES

Nothing in this Agreement shall restrict the authority of King County, the City of \_\_\_\_\_ or any duly authorized power or utility company to trim the Protected Tree in accordance with the applicable laws and regulations of the City of \_\_\_\_\_, King County and the State of Washington, including KCC 14.52.080, which requires all trimming to be done in a manner that preserves the general appearance of the tree.

## 4. REMOVAL OF TREE

In the event an Act of God or other natural cause over which Grantor has no control kills or substantially impairs or damages the natural or scenic character of the Protected Tree such that the Protected Tree no longer possesses the values intended to be preserved by this Agreement, or if such event creates a substantial risk of significant damage to property or personal injury, the Protected Tree may be removed at the Grantor's expense, fifteen (15) days after receipt of written notice to Grantee. Pruning and restoration alternatives that will protect people and property

while preserving the scenic value of the Protected Tree are preferred to removal and shall be duly considered prior to removal and implemented where feasible.

## 5. REMEDIES

- A. If a dispute arises between the Grantor and the Grantee concerning the consistency of any proposed action, activity, or use with the purpose of this Agreement the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, either party may refer the dispute to arbitration by request made in writing upon the other. Within thirty (30) days of receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of the arbitrator, then the presiding judge of King County Superior Court shall appoint one. The matter shall be settled in accordance with RCW ch. 7.04 or the state arbitration statute then in effect, and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. The parties agree not to proceed with the proposed action, activity, or use, after being notified of the dispute orally or in writing, pending resolution of the dispute.
- B. The remedies appropriate for resolution of the dispute shall be determined by the arbitrator. Remedies shall include, but not be limited to, a temporary or permanent injunction of the disputed action, activity or use, an order requiring restoration of the Protected Tree to the extent possible to the condition and appearance required under this Agreement, and, in the event of intentional or reckless damage to or destruction of the Protected Tree, money damages in an amount equal to three (3) times the assessed value of the tree prior to the damage or destruction.
- C. Irrespective of any other remedies provided for Grantee, Grantee may, at its discretion, and following thirty (30) days written notice to Grantor, commence such other appropriate legal action to obtain the remedies contemplated under this Agreement and any other remedies deemed appropriate by the court or other decisionmaker in that action.
- D. The substantially prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration or litigation, including, without limitation, the fees and expenses of the arbitrator and attorneys' fees, which shall be determined by the court or the arbitrator and any court of competent jurisdiction that may be called upon to enforce or review the award.

## 6. HOLD HARMLESS

Grantor shall indemnify, hold harmless and defend Grantee and its members, directors, officers, employees, agents, and contractors ("Indemnified Parties") from and against all liabilities, penalties, causes of action, losses, damages, and costs, including reasonable attorneys' fees, arising from personal injury or physical damage to any property resulting from the Protected Tree, unless such injury or damage is proximately caused by a negligent or deliberate wrongful act of any of the Indemnified Parties.

## 7. TRANSFERS OF INTERESTS

- A. The provisions and covenants of this Conservation Easement shall run with the Grantor's Property in perpetuity, and shall be binding upon and benefit the heirs, successors, and assigns of all parties to this Agreement.
- B. Grantee shall have the right to transfer the Conservation Easement created by this Agreement to any public agency, or nonprofit corporation as described in RCW 64.04.130 and RCW 84.34.210, and also in 26 U.S.C. §§ 501(c)(3) and 170(h), if such agency, organization, or corporation expressly agrees to assume the responsibilities imposed on the Grantee by this Agreement.
- C. Grantor agrees to incorporate the terms of this Agreement in any deed or legal instrument by which Grantor divests itself of any interest in all or a portion of Grantor's Property, including but not limited to, a leasehold interest, and shall notify Grantee in writing of any such transfer. The failure of Grantor to perform any act required by this Paragraph C shall not impair the validity of this Agreement or limit its enforceability in any way.

## 8. MISCELLANEOUS

- A. *Severability.* If any provision of this Agreement is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.
- B. *Notice.* Any notices required by this Agreement shall be in writing and shall be personally delivered or sent by first class mail to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address or designee:

To the Grantor:

To the Grantee:

- C. *Interpretation.* This Agreement shall be interpreted under the laws of the State of Washington, resolving any ambiguities and questions regarding the validity or meaning of specific provisions so as to give maximum effect to its conservation purposes.
- D. *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties hereto and supersedes all prior written or oral agreements and understandings between them respecting the subject matter hereof.

EXECUTED the day and year first above written.

**GRANTOR:**

\_\_\_\_\_  
John E. Doe

**GRANTEE:**

\_\_\_\_\_

**EXHIBIT A**

[Legal description of Grantor's Property and Location of Protected Tree.]

## Annotation to Sample Agreement For Conservation Easement

The purpose of this sample Agreement for Conservation Easement is to provide people interested in dedicating a particular tree to PlantAmnesty's Heritage Tree Program a general idea of what their conservation easement might look like. Because the legal language can sometimes appear intimidating, this annotation is intended to explain to members of PlantAmnesty, in a general sense, what the terms of the agreement mean. This annotation is not intended to be distributed to potential participants in the Heritage Tree Program. The terms of the agreement can be varied to meet the specific needs of each individual arrangement, and in all cases, the arrangement will be governed by the specific terms of the agreement signed by the parties, and not by this annotation.

### Recitals

These paragraphs simply identify the parties to the agreement, the tree and where it is located, and the purposes of the agreement. Recital A acknowledges that the person granting the easement actually owns the property on which the tree is located. The legal description of the property is can be easily obtained from the state or a private title searching company.

The language in Recitals B, C and D is necessary in order to fall within the Washington statutes that recognize this sort of easement and allow it to be created.

The language in Recital E identifies the Grantee and acknowledges that it is the type of organization capable of holding and enforcing this type of conservation easement. The Grantee must comply with the statutes listed in the paragraph in order for the Grantor to realize any tax benefits from a charitable deduction.

**Now, therefore, . . .**

This is the paragraph in which the parties actually agree to convey and accept the easement and identifies the terms and purposes of that agreement. "Consideration" merely refers to the value and the reasons that cause the parties to enter the agreement.

#### **1. Grantee's Rights.**

These paragraphs list the rights that PlantAmnesty, as the Grantee, will have after the agreement is entered. The Grantee will have the right to come onto the Grantor's property once a year to inspect the tree and to determine if the tree is healthy or is at risk of damage. Before making these inspections PlantAmnesty is required to notify the Grantor in writing at least ten days before entering the Grantor's property. The Grantor's consent is not required for each inspection because this agreement acts as the consent for the annual inspections. The notice requirement does, however, alert the Grantor of a

coming inspection and would enable the Grantor to contact PlantAmnesty and try to arrange an agreeable time for the inspection.

This section also permits the Grantee to enter the property without notice if it has reason to believe the tree is at risk of harm or that the agreement is being violated. The section also authorizes PlantAmnesty to enforce the terms of the agreement.

## **2. Grantor's Rights and Obligations.**

This paragraph lists the rights and responsibilities of the Grantor after entering this agreement. In general, the Grantor continues to be responsible for everything it had been responsible for before entering the agreement. This includes pruning and basic maintenance and other things necessary to maintain a healthy tree. The section also clarifies that the Grantor continues to bear all responsibility for taxes and any other legal responsibilities. This paragraph does not impose any liability on the Grantor that it did not already have, other than the Grantor's agreement to monitor the health and appearance of the tree more closely.

## **3. Removal of Tree.**

This paragraph describes the circumstances under which the tree can be removed if it is dead or significantly damaged by natural causes. Consistent with the purpose of the agreement, the paragraph notes that removal of the tree is the least desirable alternative and should be considered only if neither pruning nor restoring the tree will adequately protect people and property. This includes passersby and any adjacent property not owned by the Grantor. If removal is required, the paragraph requires the Grantor to give the Grantee fifteen days notice before removing the tree. This notice period provides the Grantee with an opportunity to consult with Grantor about the most desirable alternative.

## **4. Remedies.**

Although no party ever contemplates that a dispute will arise, these paragraphs are necessary to describe the process and the ways to resolve a dispute should one unfortunately arise. The section is designed to avoid litigation and to come to a speedy, friendly, and inexpensive resolution. In this section the parties also agree to postpone whatever activities prompted the dispute until it has been resolved.

The remedies listed in paragraph B are designed to give the arbitrator an idea of what the parties think are appropriate remedies for disputes under this agreement. The arbitrator will still be authorized to tailor a specific remedy that will best resolve the dispute. An injunction is simply an order from the arbitrator or from a court requiring a party to do or not to do a particular action. The money damages provision is included to provide an incentive to the Grantor not to intentionally remove a healthy tree or damage the tree either intentionally or recklessly. The assessed value of a tree, of course, varies with the type and age of a tree, but for trees of the type suitable to the Heritage Tree

Program, the assessed value is generally between three thousand and five thousand dollars.

**5. Transfers of interest.**

This section acknowledges that the Grantor can transfer his or her property to another person as long as the conservation easement is binding on that person. This section requires that the new person, including someone who might be leasing the property, is fully aware of the status of the tree and the responsibilities associated with the Heritage Tree Program.

This section also permits the Grantee to transfer its interest in this conservation easement to another organization, including the state, county or city, that meets the same requirements that PlantAmnesty must meet under the statutes listed in paragraph B of this section.

**6. Miscellaneous provisions.**

Paragraph A of this section simply allows the agreement to remain enforceable in the event that some of its terms become invalid. This type of paragraph is standard in nearly every modern agreement and its inclusion here is not because of any concern that the terms of this agreement are in any way illegal or unenforceable.

Paragraph B merely provides the addresses at which both parties can be reached. Paragraph C is meant to be an aid to anyone interpreting this agreement by notifying that person that the parties want the agreement to be interpreted in a way that will best provide for the preservation of the tree. Paragraph D simply states that the agreement is governed by the written terms of the agreement, and not by any other representations, understandings or agreements made during negotiations or prior meetings.

## Deborah Powers

---

**From:** Amanda Davis <Amanda.Davis@bothellwa.gov>  
**Sent:** Wednesday, October 24, 2018 7:52 AM  
**To:** Deborah Powers  
**Cc:** Jordan Sanchez  
**Subject:** Re: [EXTERNAL] Question on Retained Tree Bond Process

**Categories:** High Category

Deborah, usually the applicant or developer will post a performance bond for the tree retention prior to the City issuing the grading or the plat construction permit(s). We add this as a condition of preliminary plat approval. The amount of the bond is subject to the chart in BMC Title 12.18.030.F.

Usually all trees designated to be retained, in the net buildable area of the plat or short plat, must be bonded for. The bond will be released, at the Project Coordinator or Planner's discretion once the buildings have been built or all grading activities are completed.

If you have any other questions feel free to give me a call.

Thanks

*Amanda Davis*

Amanda Davis, Senior Planner  
 City of Bothell  
 18415 101st Ave NE  
 Bothell, WA 98011  
 (425)806-6400 ext. 6409

---

**From:** Jordan Sanchez  
**Sent:** Tuesday, October 23, 2018 3:24 PM  
**To:** Amanda Davis  
**Subject:** FW: [EXTERNAL] Question on Retained Tree Bond Process

Hey Amanda, can you please help Deborah from City of Kirkland? See below.

Thanks,

**Jordan Sanchez**  
 Permit Coordinator  
 City of Bothell  
 425-806-6400  
 18415 101<sup>st</sup> Ave NE  
 Bothell, WA 98011



Permit Counter Hours 9am – 4pm (Thursday we close at noon)

Apply online or check application status at:

[www.MyBuildingPermit.com](http://www.MyBuildingPermit.com)

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**From:** Deborah Powers [mailto:DPowers@kirklandwa.gov]  
**Sent:** Tuesday, October 23, 2018 2:40 PM  
**To:** Permit Services <PermitSvcs@bothellwa.gov>  
**Subject:** [EXTERNAL] Question on Retained Tree Bond Process

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

"

Good Afternoon City of Bothell Planning,

We're undergoing an update to our city-wide tree code and are interested in strengthening the code to further protect trees that have been retained with development. Right now Planners record a 5-Year Maintenance Agreement on the title of properties where trees were retained. We noticed Bothell uses a bond process as outlined in your municipal code BMC 12.18.030 (F):

F. The community development director shall require a tree retention bond or other surety be submitted to the city of Bothell to ensure retention of existing trees and plant material during construction. In the event any trees designated by the city to be retained are removed, the city shall have the option of enforcing any bond posted. Each tree identified for retention shall be bonded pursuant to the following table. The applicant may request that the bond be waived for trees outside the project clearing area, such as those within critical areas and their buffers, and such requests shall not be reasonably denied.

Could you describe the process for posting the bond, ie who does what? Do the Planners or Permit techs collect funds from developers? Has it been effective in curtailing tree damage or unauthorized removal during or following development?

Thank you in advance for your input!

Best,

*Deb Powers*  
*Urban Forester*  
ISA Certified Arborist  
ISA Tree Risk Assessment Qualified  
City of Kirkland Planning & Building Department  
p: 425-587-3261  
hrs: Mon-Fri 8am-4:30pm

NOTICE: This e-mail account is part of the public domain. Any correspondence and attachments, including

personal information, sent to and from the City of Kirkland are subject to the Washington State Public Records Act, Chapter 42.56 RCW, and may be subject to disclosure to a third party requestor, regardless of any claim of confidentiality or privilege asserted by an external party.





CITY OF KIRKLAND  
 Planning and Community Development Department  
 123 Fifth Avenue, Kirkland, WA 98033 425.587-3225  
[www.ci.kirkland.wa.us](http://www.ci.kirkland.wa.us)

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT  
 MEMORANDUM

To: Marilynne Beard, Interim City Manager

From: Eric Shields, AICP, Planning Director  
 Jon Regala, Senior Planner

Date: May 4, 2010

Subject: RESPONSE TO INQUIRY ON HEDGES

RECOMMENDATION

City Council reviews the information below and provides direction as to whether this issue should be included on the list of this year's code amendments to be considered by the Planning Commission and Houghton Community Council.

BACKGROUND

During the *Items from the Audience* portion of the City Council's March 16, 2010 meeting, a Kirkland resident, voiced concern regarding her neighbor's hedge since the hedge reduces sunlight to her property and blocks her territorial view to the west. The hedge, comprised of Leyland Cypress trees, was planted by the adjoining property owner along their common north/south property line. The hedge also affects her neighbors. The Kirkland resident also stated that the property owners to the west were not interested in limiting the height of the hedge due to a desire to maintain their privacy. The concerned resident has requested that the City intervene and begin regulating hedges, similar to how the City regulates fences, in order to protect her views and property values. The City Council asked staff to prepare a background informational memo regarding regulating hedges.

The Kirkland Zoning Code (KZC) regulates fences (see Attachment 1), but does not regulate hedges. In general, fences are limited to a height of 3.5' if within the front yard setback and 6' within the side and rear yard setbacks. The maximum height limit for the zone dictates the fence height limit elsewhere on a property. The City recently completed an update to its tree and vegetation regulations. The KZC has not and does not regulate the height of vegetation. When issues regarding hedge height limitations for private view purposes arise, the practice has been to advise property owners to resolve the issue between them.

The Comprehensive Plan does have a policy about protecting public and private views:

*Policy CC-4.5: Protect public scenic views and view corridors.*

*Public views of the City, surrounding hillsides, Lake Washington, Seattle, the Cascades and the Olympics are valuable not only for their beauty but also for the sense of orientation and identity that they provide. Almost every area in Kirkland has streets and other public spaces that allow our citizens and visitors to enjoy such views. View corridors along Lake Washington's shoreline are particularly important and should continue to be enhanced as new development occurs. Public views can be easily lost or impaired and it is almost impossible to create new ones. Preservation, therefore, is critical.*

*Private views are not protected, except where specifically mentioned in some of the neighborhood plan chapters of the Comprehensive Plan and in the City's development regulations.*

Deb Powers, the City's Urban Forester has been in contact with the concerned Kirkland resident regarding the hedge height issue several times since spring 2009. Because the KZC does not regulate hedges, Ms. Powers had recommended the City of Bellevue's mediation program as a way to settle the dispute. Ms. Powers had also recommended that the concerned Kirkland resident check her title report for any private view covenants that may have been established between previous owners, obtain legal advice from an attorney, to get involved with the tree regulation amendment process (now complete), and/or to get involved with neighborhood planning as possible solutions.

#### HOW OTHER CITIES REGULATE HEDGES

Most Washington cities, including Kirkland, regulate the height and location of vegetation to ensure traffic safety at intersections. However, many cities do not regulate hedges in terms of placement and height. These cities include our neighbors Bellevue and Redmond, as well as King and Snohomish Counties and the cities of Auburn, Edmonds, Enumclaw, Maple Valley, Mercer Island, Port Townsend, Seattle, Spokane, Vancouver, Woodway, and Yakima.

The following chart and definitions summarize how some municipalities regulate hedges. The information was gathered from the Municipal Research and Services Center of Washington's website based on the list of municipalities that regulate fences and hedges.

CITY/COUNTY/TOWN	HEDGES – MAXIMUM HEIGHT			
	Front Yard	Side Yard	Rear Yard	General Notes
Anacortes	Sight obscuring - 2.5' Non-sight obscuring - 4.5'	7'	7'	
Bellingham	3.5* to 4.5  *Maximum height on corner lots	3.5* to 6'	6'	<ul style="list-style-type: none"> <li>If not in a required yard, maximum structure height applies</li> <li>Hedge may exceed maximum height if abutting property owners consent and City determines it's not detrimental in terms of view, light, air, and traffic safety</li> </ul>
Bonney Lake	4'	6'	6'	
Clyde Hill	8'	8'	8'	
Fircrest	4'	6'	6'	
Franklin County	4'-6'	6'	6'	
Longview	3.5'	No Limit	No Limit	
Lynnwood	Vision-obscuring hedge not allowed within 15' of front property line Non-vision obscuring hedge allowed -3'	Non-vision obscuring hedge – 3' Vision- Obscuring 3' to 6'	Non-vision obscuring hedge – 3' Vision-obscuring 3' to 6'	
Monroe	3.5'	6'	6'	6' anywhere else on the lot
Mountlake Terrace	4'	6'	6'	6' anywhere else on the lot
Yarrow Point	6'	6'	6'	

Of the municipalities that regulate hedges, the following municipalities have a definition for a hedge:

Anacortes	Municipal Code 17.06.385. "Hedge" means trees, vines, and/or shrubs which are planted in a substantially uniform configuration, grown and joined together in some definite manner and generally pruned to a uniform shape, creating a substantial barrier to sight. (Ord. 2316 (part), 1994) See also "Fence."
Clyde Hill	Municipal Code 17.04.230. A "fence" shall be any barrier that is naturally grown or constructed for purposes of confinement, means of protection or use as a boundary.
Fircrest	Municipal Code 22.98.338. Hedge means a row of small trees, shrubs, or other vegetation planted as a fence or boundary. (Ord. 1375 § 9, 2005).
Lynnwood	Municipal Code 21.02.390. "Hedge" means a row of closely planted shrubs or trees forming a boundary or barrier. <ul style="list-style-type: none"> <li>• "Vision-obscuring fences and hedges" shall mean solid or partially open fences and hedges</li> <li>• "Non-vision-obscuring fences and hedges" shall include solid or partially open fences and hedges</li> </ul>
Mountlake Terrace	Municipal Code 19.15.090. "Hedge" means a continuous barrier or screen formed of shrubs, trees or a combination thereof.
Yarrow Point	Municipal Code 17.08. Hedges exist whenever a row of two or more trees, shrubs, or other plants constitute a barrier in excess of six linear feet and establish a boundary, or hinder free passage of humans or animals on the surface of the ground or screen or obscure vision, or baffle sound.

The City of Edmonds repealed its hedge regulations in March 2004 because the regulations were not effective. It appears that the previous hedge regulations were subject to varying interpretations, making enforcement difficult. Copies of City of Edmond's Planning Board and City Council minutes have been attached to provide the Council insight into their discussion on this matter (see Attachments 2 and 3). Inadequate city resources, property rights issues, and difficulty in regulating vegetation were mentioned as reasons for the repeal of the Edmonds regulations.

#### ISSUES

The Merriam-Webster online dictionary defines a hedge as "1) a fence or boundary formed by a dense row of shrubs or low trees, or 2) a barrier, limit." Unlike fences, shrubs or trees are living things that grow and change over time. Because hedges are not static and because they have not previously been regulated within the City, staff has identified the following potential issues.

### *Objectives*

The first issue is to clarify the intended objectives of regulating hedges. Since hedges may have similar impacts as fences, should hedges be regulated similarly? The City's fence regulations protect neighbors and the public from the impacts, such as reduced light and air, caused by structures close to property lines by limiting fence height within required yards. However, outside of required yards, fences may be built up to the same height limit allowed for other structures. On a side note, shrubs and trees, which the City encourages to be retained, may also have the same impacts as fences but are not regulated.

Another potential purpose for regulating hedges is to minimize view obstruction. This has been an area of regulation that the City has seldom pursued. If hedge regulations are intended to protect views, regulating them as fences may be overly restrictive, since development regulations already allow potentially view obstructing structures outside required yards up to the height limits established by the underlying zoning. Also, the height of trees and other vegetation are not regulated.

### *Regulations*

The first step in regulating hedges would be to create a definition of a 'hedge' that achieves the intended objectives, is clear, and not subject to interpretation. The following points would need to be clarified with a 'hedge' definition:

- Clearly state what constitutes a hedge. Is a hedge a straight row of tightly planted vegetation of uniform species, as some of the definitions above suggest? Or is a hedge defined more broadly to include any dense grouping of vegetation?
- Clarify how a hedge, if made up of significant trees, relates to the City's tree regulations (tree topping, tree removal allowances, etc.)
- Differentiate between sight-obscuring vs. non sight-obscuring hedges
- Determine the minimum dimensional makeup of a hedge. What is the minimum length of a row of vegetation to be considered a hedge? What are the number and/or overall size of shrubs or trees? What is the spacing in between the individual shrubs or trees?

The second step would be to create regulations that determine where on the property hedges would be regulated (required yards or entire property) and the maximum height of hedges depending on their location on the property. As seen from the research on cities regulating hedges, the hedge height limit is typically shorter within the required front yard than in the required side and/or rear yards, and is not regulated outside of required yards.

Lastly, any potential new regulations will need to address how the City will review hedges for compliance. Key issues include:

- Will a permit be required for planting a hedge?
- Should property owners be required to sign maintenance agreements that limit the size of a hedge?
- How will the City ensure code compliance?

- Will inspections be necessary? On what reoccurring basis?

### *Non-Conformances*

If Kirkland were to adopt hedge regulations, the following questions will need to be resolved when dealing with existing non-conforming hedges:

- How will the City track and regulate hedges planted before or after the effective date of a new hedge ordinance?
- How will the City treat existing hedges that become non-conforming as a result of the new regulations? Should all existing hedges be subject to the new regulations or at what threshold will existing hedges be required to conform? There are some legal issues that would need to be considered if the Council wanted to give the regulations retroactive effect, which include vesting and property rights.
- Hedges that are required to be reduced in height and that were not previously maintained may become eyesores. Should there be regulations that address this issue?

### *Code Enforcement*

The City's current code enforcement process includes issuing a Notice of Violation and then a Notice of Civil Infraction if violations have not been rectified within a given time frame. At the point that a Notice of Infraction is issued, fines are assessed. Processing code enforcement violations can be a lengthy and involved process.

Due to the large number of 'over grown' hedges that exist throughout the City and the annexation area, retroactive application of new hedge regulations would subject many property owners to code enforcement.

### RECOMMENDATION

Staff recommends that due to the complexity of issues that would need to be addressed, the City not take up the issue at this time and consider it during a future update to the City's landscape regulations.

### ATTACHMENTS

1. Fence Regulations
2. City of Edmonds Planning Board Minutes December 10, 2003
3. City of Edmonds City Council meeting minutes March 2, 2004

## 115.40 Fences

### 1. General

a. Fences not over six feet in height may be anywhere on the subject property except:

1) A fence may not be within 15 feet of any street curb, or the edge of the street pavement, if no curb exists; or

2) If the applicant can show with a survey, or other reasonable means, the location of his/her property line, the fence can be placed on the property line regardless of the distance from a street curb or the edge of the pavement.

3) A fence may not violate the provisions of KZC 115.135.

*Sight Distance Regs.*

4) A detached dwelling unit abutting a neighborhood access or collector street may not have a fence over 3.5 feet in height within the required front yard.

On corner lots with two required front yards, this restriction shall apply only within the front yard adjacent to the front facade of the structure.

5) No fence may be placed within a high waterline setback yard or within any portion of a north or south property line yard which is coincident with the high waterline setback yard.

b. Fences over six feet in height may not be located in a required setback yard. See KZC 115.115, Required Yards, for regulations relating to fences on retaining walls.

c. The Planning Official may approve a modification to the fence height requirements, if:

1) The modification is necessary because of the size, configuration, topography or location of the subject property; and

2) The modification will not have any substantial detrimental effect on abutting properties or the City as a whole.

2. Barbed Wire – Barbed wire is permitted only atop a fence or a wall at least six feet in height.

3. Electrified Fences – Electrified fences are not permitted in Kirkland, except to contain large domestic animals (see KZC 115.20(2)(c)). All electric

fences and appliances, equipment, and materials used in connection therewith shall be listed or labeled by a qualified testing agency and shall be installed in accordance with manufacturer's specifications and in compliance with the latest edition of the National Electrical Code. Furthermore, electrified fences must be located at least 18 inches on the inside of wood fences when located along any property line. In addition, all electric fences shall be posted with permanent signs which are a minimum of 36 square inches in area at intervals of 15 feet along the fence stating that the fence is electrified.

**HEDGE ISSUE DISCUSSION  
BEGINS HERE**

These Minutes Approved  
January 14<sup>th</sup>

## **PLANNING BOARD MINUTES**

### **December 10, 2003**

Chair Crim called the regular meeting of the Planning Board to order at 7:00 p.m. in the Council Chambers, Public Safety Complex, 250 – 5<sup>th</sup> Avenue North.

#### **BOARD MEMBERS PRESENT**

Jim Crim, Chair  
James Young, Vice Chair  
Virginia Cassutt  
Janice Freeman  
John Dewhirst  
Ronald Hopkins  
Judith Works

#### **BOARD MEMBERS ABSENT**

Cary Guenther

#### **STAFF PRESENT**

Rob Chave, Planning Division Manager  
Duane Bowman, Community Services Director  
Karin Noyes, Recorder

#### **READING/APPROVAL OF MINUTES**

BOARD MEMBER DEWHIRST MOVED TO APPROVE THE MINUTES OF NOVEMBER 12, 2003 AS CORRECTED. BOARD MEMBER HOPKINS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

BOARD MEMBER FREEMAN MOVED TO APPROVE THE MINUTES OF NOVEMBER 19, 2003 AS CORRECTED. BOARD MEMBER WORKS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY, WITH BOARD MEMBER DEWHIRST ABSTAINING.

#### **ANNOUNCEMENT OF AGENDA**

No changes were made to the proposed agenda.

#### **REQUESTS FROM THE AUDIENCE**

There was no one in the audience who expressed a desire to speak before the Board during this portion of the meeting.

#### **PUBLIC HEARING ON FILE NUMBER CDC-03-1**

Mr. Bowman explained that the proposed draft ordinance would effectively move the City into a position of deregulating hedges. He briefly reviewed the history of this issue. He said that, currently, ECDC 21.40.020 defines hedges as “a fence or boundary formed by low growing trees.” This definition is vague and subject to interpretation. In 1989 there was a landmark ruling by the Hearing Examiner that defined the term “low growing.” His decision indicated that unless a specific species of tree was “low growing” they could not constitute a hedge. Even so, staff is still often caught between neighbors arguing over height and the composition of vegetation planted between properties.

Mr. Bowman advised that two appeals of Hearing Examiner decisions regarding hedges were heard by the City Council in 2002. In both cases, the decision of the Hearing Examiner was upheld, but the City Council referred the matter to the Planning Board for review on December 17, 2002.

Mr. Bowman explained that the Board has been considering two options to address the situation. They could either redefine the definition for hedges to make it more enforceable or they could discontinue regulating hedges. A public hearing was held and the Board has accepted written testimony on the issue, as well. Staff attempted to summarize the major topics that were raised by citizens. It appears that protection of views was the most important issue, and many felt the City should be involved in the process of resolving these disputes. The citizens who provided input also expressed concern about the impact hedges can have to property values. They also felt the City should pay to regulate situations where neighbors act spitefully.

Mr. Bowman provided pictures of vegetation growing within the City and identified those that could be considered a hedge according to the current definition. He advised that after receiving testimony and correspondence from residents, the Planning Board concluded that the best alternative was to not regulate hedges, except where they could create sight distance problems at driveway entrances or street intersections. He explained that some of the reasons for the selection of this alternative was that trying to regulate vegetation on private property could expose the City to potential lawsuits and increased attorney costs. In addition, any effort to adequately define and regulate hedges would require expensive enforcement procedures and an extensive inventory to create proper documentation of existing conditions.

Board Member Young arrived to the meeting at 7:20 p.m.

Mr. Bowman said the proposed amendments to ECDC 21.30.020 and ECDC 17.30 would eliminate all reference to hedges. He pointed out that existing language in ECDC 21.12.025 would address situations related to visibility from driveways and vehicle access points. He advised that while ECDC 17.30 deals with fences that are located at intersections, vegetation at intersections is regulated in ECDC 18.85.060. This section would require that a property owner prune vegetation that impacts sidewalks and streets for visibility purposes. In addition, Mr. Bowman advised that the traffic engineer is working on amendments to better define the site distance triangle.

Mr. Bowman referred the Board to a letter from Mr. Richard Passey regarding the hedge issue. This letter was entered into the record as an exhibit. A copy was provided to each of the Board members. He explained that the purpose of this hearing is to allow the Board an opportunity to accept public testimony and then forward a recommendation to the City Council.

Board Member Works pointed out that fences within the front setback areas are limited to three feet in height, yet there are no height limitations for vegetation that is located within the front setbacks. She suggested that perhaps there should be similar requirements for vegetation to ensure that view blockage to the streets does not occur. Mr. Bowman emphasized that a property owner would be required to prune or remove anything that obstructs the view of traffic. In addition, the City staff is working on further modifications of the code to provide better measurements for site distance.

Board Member Young recalled previous Board discussion that the City's jurisdiction to regulate the height of any kind of vegetation is limited to the first five feet within the property line. Mr. Bowman clarified that the Board did discuss at what point the City should stop regulating vegetation on private property. For example, should the City's regulatory authority apply only to vegetation within the setback areas. If this were the case, a property owner could plant a hedge or row of trees in the center of his/her property that could have the same impact as if they had been planted along the property line. In fact, someone could plant just a few tall trees that could have the same impact as if they had been planted as a hedge.

Mr. Bowman reminded the Board of their previous request that staff survey other cities to find out how they deal with hedges. Besides Clyde Hill, staff only found one other City, Mountlake Terrace, that regulates hedges. They only regulate hedges if they are blocking a view or on a complaint basis. Cities like Kirkland, Mukilteo, Bellevue, and Everett do not regulate hedges.

Bruce Fowler, 7471 – 174<sup>th</sup> Street Southwest, said he attended a Planning Board meeting a few months ago at which the issue of hedges was discussed. Since that time, he said he took photographs of different situations in his area where

vegetation or hedges are out of control. The first photograph was of a row of vegetation over 12 feet tall that is growing into the telephone wires. This vegetation has to be trimmed by the power company. It currently overhangs the City's right of way and paved road. Mr. Fowler suggested that where there are public roads or private access roads, property owners should be required to keep their vegetation out of the public right-of-way to allow for emergency access.

Mr. Fowler provided another photograph that showed utility trucks working in an area to maintain a utility line. This picture illustrates how the work crews ended up blocking off the emergency access. He cautioned that the Board should be careful about removing the hedge ordinance as it applies to vegetation in the front yard City right-of-way, or in the side yard when a corner lot is involved. The fire department and police department like to have a view of the front yards, and the City needs to be able to regulate vegetation in these situations. If the City decides to no longer regulate hedges, they need to make sure that regulations still exist for hedges within the City rights-of-way. Mr. Fowler said he does not believe that hedges and vegetation on rear lots should be regulated by the City. The City should not spend public dollars to resolve these situations.

Roger Hertrich, 1020 Puget Drive, said he addressed the Board regarding the issue of hedges in 1990, but the task was never completed. The task, at that time, was to redefine what hedges are. He said he has a copy of the Clyde Hill ordinance, and they use a different type of description that he found interesting. Most of their hedge regulations are found in combination of fence regulations. Clyde Hill's regulation states that, "fences shall be any barrier which is either naturally grown or constructed for purposes of confinement, protection or for use as a boundary."

Mr. Hertrich said that because the City has had a hedge regulation on the books for quite some time, there must be a reason for providing the limits and protection. A hedge could be considered to be a naturally growing fence since it ends up performing the same purposes as a fence (to act as a barrier or a boundary). Therefore, he felt it would be inappropriate for the City to separate the two and regulate fences but not hedges. People who live in Edmonds have enjoyed some level of protection and at least there are rules on the books giving an opportunity for compliance on a reasonable basis without involving the City. While most people follow these rules, some do not, and the City has to step in and get involved.

Mr. Hertrich said he believes that most citizens of Edmonds feel that the City needs to have rules and regulations for fences, and they also believe that hedges should be regulated as naturally growing fences, providing the same type of problems and protections. He said he believes the City should have regulations for hedges and fences, but they should only apply to the areas within the setbacks. The City already has rules and regulations to govern fences and buildings that are constructed within the setback area, and they should create rules for hedges, as well.

Mr. Hertrich said that while he agrees that a single tree can end up blocking a person's view, the issue before the Board is more related to naturally grown fences which are used as barriers and do not allow light or air to pass through them. When these natural fences get too high, the height limit regulations can resolve the situation. He suggested that the City should continue to regulate hedges, but they should be defined as naturally grown fences. The same regulations that apply to fences should also apply to naturally grown fences.

Mr. Hertrich said the efforts that have been made by the City to regulate hedges have had problems, mostly because by the time the City recognizes a problem, it is too late to trim the trees. These trees should be grandfathered rather than cut down at this point. But when new developments are constructed, the City's rules and regulations should prevent property owners from intentionally planting trees that grow to significant heights. He noted that Clyde Hill's ordinance states that, "When trees are intentionally planted as site obscuring barriers that cause problems, the intent must be taken into consideration."

Mr. Hertrich cautioned that he has a problem with the description that was provided in the sample ordinance prepared by staff, which states that hedge regulations have the potential of wasting public resources. He suggested that this is not a good reason for eliminating the hedge ordinance. The Planning Board should examine the reason for having a height limit on fences, and then apply this same philosophy to hedges since there is really no difference.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

Board Member Dewhirst said he understands that a lot of people have testified about this issue over the past year, and he also understands the frustration that is contained in the letters the Board has received from the public. But he is troubled with this

**APPROVED**

issue because he does not see this as a situation where an ordinance can do much good. If the Board were to pass a new ordinance or clarify the existing ordinance, every situation that exists now would be grandfathered in as a non-conforming use. Therefore, changing the regulations would not really achieve the result expressed by the citizens. He said it is really hard to correct things over time when the problem keeps growing. Fences are built to certain heights, and they do not continue to grow taller. While he can understand issues related to view blockage and property values, he is more concerned about sunlight being blocked from neighboring properties. However, the proposed amendments would not address this issue, and he said he does not believe that changing the zoning code is the right approach.

Board Member Dewhirst asked staff how many cases they have adjudicated over the past year. He also asked staff to provide information related to expenses and outcome. He said he is in support of getting hedge regulations out of the code. He suggested that, in the future, the City should consider some type of arbitration for property owners to go through if the City's financial situation improves.

Mr. Dewhirst referred to Mr. Fowler's concern about trees and other vegetation being allowed to overhang onto the public rights-of-way. This concern can be resolved easily with a phone call to the City staff or to the Mayor's office. He said he is not concerned about this issue, but he is concerned that no matter how the City changes its hedge regulation, it will not work. Therefore, he suggested that the City should conserve their resources to fight those battles in which they have a chance to make a difference or change the outcome. He said he would support the ordinance that gets the City out of the business of regulating hedges.

Mr. Chave clarified that fences are limited to six feet in height and slightly higher with a trellis. They can be located anywhere on a property. If a property owner wants to build a fence that exceeds this height, a variance would be required.

Board Member Freeman said the concern raised by Mr. Fowler is a safety issue that can be addressed with the existing code requirements as explained by Mr. Bowman. She suggested that later on, the Board might want to look at health issues related to light, etc. But right now, with the present fiscal difficulties of the City, she felt it would be inappropriate to pass an ordinance that would cost \$100,000 plus to administer. She questioned where the City would get the money to implement the ordinance. It would likely have to come from another City program. She suggested that perhaps the Board could revisit the issue later when the financial situation is different.

Mr. Bowman clarified that the estimated cost for implementing a new hedge ordinance would pay for documentation of all of the existing vegetation in Edmonds. The best alternative for documenting the existing vegetation would be to conduct an inventory at a cost of about \$100,000. This would give the City staff a solid baseline to administer the ordinance. Another less costly option would be to hire an outside expert to study the vegetation, but this type of information would be more clouded if the City were to get into a legal dispute.

Board Member Freeman clarified that existing situations would all be grandfathered in, so a new hedge regulation would only apply to new developments, which they do not have a lot of in the City right now. Mr. Bowman said all of the area in the south of Edmonds was developed as part of Snohomish County, and Snohomish County did not have hedge regulations.

Board Member Cassutt recalled that the Board discussed issues related to sunlight and basically concluded that there was really nothing the Board could do to address this issue now. Mr. Bowman said that, unless the City were to create separate regulations that deal with solar access issues, they would not be able to do anything about these situations. But all of the existing situations would be grandfathered in, even if a new solar access ordinance were approved. The new ordinance would only apply to new development. Board Member Freeman pointed out that if a hedge or other vegetation becomes a public safety issue, the City has the ability to handle these situations by using the existing regulations.

Board Member Young said that regardless of which direction the Board chooses to go, he would not be in favor of sending the ordinance, as written, to the City Council with a recommendation of approval. He said he feels the ordinance is too "whiney," and gives the impression that the Board is proposing the ordinance in order for the City to save money. In addition, protection of property values should not be portrayed as a waste of money and time since that is what most of the public testimony focused on.

Board Member Young agreed with Board Member Dewhirst that the City should get out of the business of regulating hedges. However, he is not convinced that the proposed ordinance is the way to accomplish this. He recalled that when the Board first started their review of this issue, Board Member Dewhirst pointed out that while the City has an enforcement officer, there is a backlog of enforcement complaints. Board Member Young asked staff to elaborate as to what type of complaints the City generally receives. Mr. Bowman answered that the City receives complaints on a large range of issues related to property nuisances, building code violations, etc. Board Member Young inquired if the complaints fall into the general category of health and safety issues. Mr. Bowman replied that the complaints are a mixture of health and safety issues, setback violations, land use problems, etc.

Board Member Young commented that there is just so far the Planning Board can go philosophically in terms of regulating something like hedges. He said he feels that any regulations for vegetation should only apply to areas within the setback. He said he would not want the City to be able to tell him what he can and cannot do on his property, with the exception of height, etc. If the goal is to protect property values, it would be necessary for the City to regulate the height of anything placed anywhere on private property that ends up blocking the view from a neighboring property. Regulating hedges within the setback area would not really accomplish the goal of protecting property values. Therefore, he said he would be in favor of the City getting out of the business of regulating hedges.

Board Member Young said he shares Board Member Freeman's concern about safety issues and staff has assured the Board that the City has codes already in place to deal with this concern. He concluded by stating that until the City can find a wholesale way to regulate hedges, they should get out of the business of doing so.

Mr. Bowman said that if the Board is concerned about the language in the proposed ordinance, it would be appropriate for them to identify those areas that need to be revised. He said it is important for the Board to give clear direction to staff as to ordinance language that would support their position and clearly identify why they believe the ordinance should be adopted.

Board Member Young suggested that if the Board decides to recommend that the City no longer regulate hedges, they should clearly state that the reason is because they do not really think that hedge regulations accomplish that goal.

Board Member Crim suggested that the emphasis that is made in the WHEREAS statements regarding the waste of public resources is probably missing the mark a little bit. He said Board Member Dewhirst is right in the sense that a hedge regulation would not be able to accomplish the real regulation for hedges, height and encroachment on neighbors. He suggested that the ordinance be changed to reflect that intent.

Board Member Works referred to the regulations that deal with vegetation that is used to screen parking lot perimeters, and noted that these regulations reference the term "hedges." Mr. Bowman explained that the City Attorney has indicated that some type of definition for "hedge" must remain in the City codes because it is used in other locations.

Board Member Crim referred to Section 20.12.025 and suggested that the word "vegetation" should be substituted for the word "hedge." Then they could take the definition for "hedge" out of this section. He also suggested that the City's code be more aggressive in enforcing the visual site distance regulations. Mr. Bowman said he would work with the traffic engineer to consider additional language in Section 17.13 to better clarify this issue.

Board Member Crim suggested that since the pressure to make a recommendation to the City Council on this issue is not overwhelming, perhaps the Board should take time to review the changes that staff will make to the ordinance before sending the document to the City Council with a recommendation for approval. Mr. Bowman said he would rather make the changes as directed by the Board and then bring the ordinance back to the Board for final approval before sending it forward to the City Council.

**BOARD MEMBER DEWHIRST MOVED THAT THE BOARD DIRECT STAFF TO CLEAN UP THE SECOND AND THIRD WHEREAS STATEMENTS TO ELIMINATE REFERENCE TO THE POTENTIAL WASTE OF PUBLIC RESOURCES AND ADD LANGUAGE TO THE EFFECT THAT THE ZONING ORDINANCE CANNOT REALLY SOLVE THE PROBLEMS RELATED TO HEDGES. ONCE THE CHANGES ARE MADE, THE DRAFT ORDINANCE**

**APPROVED**

FOR CDC-03-1 SHOULD BE FORWARDED TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. BOARD MEMBER CASSUTT SECONDED THE MOTION.

AFTER BRIEF BOARD DISCUSSION, BOARD MEMBERS DEWHIRST AND CASSUTT WITHDREW THEIR MOTION.

Mr. Bowman agreed with Board Member Crim that if the Board were to use the term “vegetation” instead of “hedge,” they could remove the definition for hedge.

BOARD MEMBER DEWHIRST MOVED THAT THE PLANNING BOARD RECOMMEND APPROVAL OF THE PROPOSED ORDINANCE AMENDING THE EDMONDS COMMUNITY DEVELOPMENT CODE CHAPTERS 21.40.020 AND 17.30.000 (FILE NUMBER CDC-03-1), WHICH WOULD CAUSE THE CITY TO CEASE TO REGULATE HEDGES. HE FURTHER MOVED THAT THE PROPOSED ORDINANCE BE AMENDED AS FOLLOWS:

- CHANGE THE SECOND WHEREAS STATEMENT TO READ, “WHEREAS THE CITY COUNCIL FINDS THAT ENFORCEMENT OF THE CITY’S CURRENT HEDGE ORDINANCE CANNOT BE DONE THROUGH THE ZONING AND DEVELOPMENT REGULATIONS.”
- CHANGE THE THIRD WHEREAS STATEMENT TO READ, “WHEREAS THE CITY COUNCIL DESIRES TO AVOID POTENTIALLY EXPENSIVE EXPENDITURES BY REPEALING THE CITY’S CURRENT HEDGE REGULATIONS.”
- ADD A NEW WHEREAS STATEMENT TO READ, “WHEREAS THE CITY COUNCIL DESIRES TO SOLVE SUCH LAND OWNER DISPUTES THROUGH OTHER METHODS TO BE LOOKED AT IN THE FUTURE.”
- REPLACE THE TERM “HEDGES ADJOIN” WITH “VEGETATION ADJOINS” IN SECTION 20.12.025.A.5.
- REMOVE THE DEFINITION OF HEDGES FROM THE DEFINITION SECTION OF THE ORDINANCE.

BOARD MEMBER CASSUTT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

BOARD MEMBER YOUNG MOVED THAT THE ORDINANCE, AS AMENDED BY STAFF, BE BROUGHT BACK TO THE PLANNING BOARD AT THEIR NEXT MEETING FOR FINAL REVIEW PRIOR TO FORWARDING IT TO THE CITY COUNCIL.

Board Member Dewhirst suggested that the Board should allow staff to make the changes, provide a copy to the Board Chair for review and approval, and then forward the Planning Board’s recommendation to the City Council without further review by the Board as a whole. He recalled that this is the method the Board has used in the past when considering proposed amendments. He felt the Board provided clear direction to the staff to make the necessary changes.

BOARD MEMBER FREEMAN SECONDED THE MOTION. THE MOTION FAILED 4-3 WITH BOARD MEMBERS CRIM, CASSUTT, HOPKINS AND DEWHIRST VOTING AGAINST THE MOTION AND BOARD MEMBERS YOUNG, FREEMAN AND WORKS VOTING IN FAVOR.

The Board agreed that staff would provide the final draft ordinance to the Chair, and he would e-mail a copy to each of the Board Members before sending it on to the City Council.

#### **WORK PROGRAM FOR 2004 – COMPREHENSIVE PLAN AND CRITICAL AREAS ORDINANCE**

Mr. Chave explained that there are a few State mandates in 2004 that the City must address. First are the amendments to the Comprehensive Plan, which must be comprehensive and include updates of population projections, capacity, etc. The City is also required to update their critical areas ordinance, which must be based upon “best available science.” He said the combination of these two projects will mean a full year of work, using supporting consultants and studies—particularly in regard to the critical areas review since there are no staff members who have expertise in this area. Mr. Chave referred to the general outline of what these two processes might look like. He also provided an overview of the funding plan for the

**APPROVED**

## EDMONDS CITY COUNCIL APPROVED MINUTES March 2, 2004

The Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Haakenson in the Council Chambers, 250 5<sup>th</sup> Avenue North, Edmonds. The meeting was opened with the flag salute.

### ELECTED OFFICIALS PRESENT

Gary Haakenson, Mayor  
Michael Plunkett, Council President  
Jeff Wilson, Councilmember  
Mauri Moore, Councilmember  
Peggy Pritchard Olson, Councilmember  
Dave Orvis, Councilmember  
Richard Marin, Councilmember  
Deanna Dawson, Councilmember

### ALSO PRESENT

David Dwyer, Student Representative

### STAFF PRESENT

David Stern, Chief of Police  
Duane Bowman, Development Services Director  
Stephen Clifton, Community Services Director  
Noel Miller, Public Works Director  
Rob Chave, Planning Manager  
Dave Gebert, City Engineer  
Scott Snyder, City Attorney  
Sandy Chase, City Clerk  
Jana Spellman, Senior Executive Council Asst.  
Jeannie Dines, Recorder

### 1. APPROVAL OF AGENDA

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER ORVIS, FOR APPROVAL OF THE AGENDA AS PRESENTED. MOTION CARRIED UNANIMOUSLY.**

### 2. CONSENT AGENDA ITEMS

**COUNCIL PRESIDENT PLUNKETT MOVED, SECONDED BY COUNCILMEMBER DAWSON, FOR APPROVAL OF THE CONSENT AGENDA AS PRESENTED. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:**

- (A) **ROLL CALL**
- (B) **APPROVAL OF CITY COUNCIL MEETING MINUTES OF FEBRUARY 24, 2004.**
- (C) **APPROVAL OF CLAIM CHECKS #69165 THROUGH #69373 FOR THE WEEK OF FEBRUARY 23, 2004, IN THE AMOUNT OF \$368,226.41.**
- (D) **REPORT ON FINAL CONSTRUCTION COSTS FOR FIRE STATION 16 LOCATED AT 8429 – 196<sup>TH</sup> STREET SW AND COUNCIL ACCEPTANCE OF PROJECT.**
- (E) **REPORT ON FINAL CONSTRUCTION COSTS FOR THE 200 DAYTON STREET BUILDING ROOF REPLACEMENT PROJECT AND COUNCIL ACCEPTANCE OF PROJECT.**
- (F) **REPORT ON FINAL CONSTRUCTION COSTS FOR THE ANDERSON CENTER WINDOW REPLACEMENT – PHASE II PROJECT AND COUNCIL ACCEPTANCE OF PROJECT.**

**HEDGE DISCUSSION  
BEGINS HERE**

update their amateur radio antenna regulations and bring them to state-of-the-art. He urged the Council to consider the information he provided when revising the amateur radio antenna regulations.

**Bob Preston, 809 Carey Road, Edmonds**, questioned why if a property owner could have a 12-foot antenna on a 25-foot structure, why could they not have a 37-foot free-standing tower. He also questioned why only a crank-up tower was allowed above 37 feet. He recognized in certain areas of the City where there were views it may be helpful to have a crank-up tower, however, in many areas where there are no views, a 65-foot fixed tower would not have an impact on the neighborhood. He acknowledged some fee was justified but preferred the fees be kept low.

Hearing no further public comment, Mayor Haakenson closed the public participation portion of the public hearing.

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER ORVIS, FOR APPROVAL OF ORDINANCE NO. 3490. MOTION CARRIED UNANIMOUSLY. The ordinance approved is as follows:**

**AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE PROVISIONS OF ECDC 16.20.050 SITE DEVELOPMENT STANDARDS – ACCESSORY BUILDINGS IN ORDER TO AMEND ITS REGULATIONS RELATING TO AMATEUR RADIO ANTENNAS AND TO ADOPT AN INTERACTIVE PROCESS IN CONFORMANCE WITH FCC REGULATIONS, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.**

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCIL PRESIDENT PLUNKETT, TO DIRECT THE CITY ATTORNEY TO PREPARE A FEE RESOLUTION FOR COUNCIL CONSIDERATION ON MARCH 16.**

Councilmember Wilson inquired about the amount of the recommended fee. Mr. Chave explained the basic administration cost for advertising, posting and mailing was estimated at \$97; staff's recommendation was a \$100 fee. He noted the \$15 surcharge would also be applied.

Councilmember Marin clarified his intent was the \$97 fee plus the \$15 surcharge for a total of \$112.

**MOTION CARRIED UNANIMOUSLY.**

**4. PUBLIC HEARING ON PROPOSED AMENDMENTS TO ECDC CHAPTER 21.40.020 AND 17.30.000 REPEALING THE CITY'S CURRENT HEDGE REGULATIONS. THE PROPOSED AMENDMENTS WOULD CAUSE THE CITY TO CEASE TO REGULATE HEDGES EXCEPT WHEN RELATED TO STREET OR ACCESS SAFETY (FILE NO. CDC-03-1)**

Development Services Director Duane Bowman explained this ordinance was scheduled for a public hearing based on the Planning Board's recommendation which would cause the City to cease regulating hedges except when related to street or access safety.

Mr. Bowman recalled in 1989, the Hearing Examiner issued a landmark ruling in regard to an interpretation of ECDC 21.40.020, the definition of hedges. His decision indicated that unless a specific kind of tree was low growing, it did not constitute a hedge; however, staff was still often caught between neighbors arguing over height and composition of vegetation between properties. He recalled the Council referred the matter to the Planning Board in December 2002 after considering cases that illustrated the difficulty with regulating hedges.

Mr. Bowman read the current definition of hedge, "Hedge means a fence or boundary formed by a row of shrubs or low trees," commenting this definition was very vague and non-specific. The Planning Board reviewed the issue, took public testimony and considered two options, 1) redefine the definition of hedges

to make it more enforceable, or 2) discontinue regulating hedges. After receiving testimony and correspondence from residents, the Planning Board concluded the best alternative was not to regulate hedges except where they created sight distance problems at street intersections, driveways, etc. The Planning Board concluded the current regulations were difficult to interpret and basically unenforceable. He recalled the Planning Board considered several different hedge definitions, however, none were deemed workable. The Planning Board concluded there were more appropriate methods of resolving disputes between neighbors such as view easements, vegetation maintenance agreements, or mediation.

Mr. Bowman explained the Planning Board again considered the ordinance at their February 11 meeting, following the Council work session, and made some slight changes to the ordinance but basically forwarded the same recommendation to repeal the City's regulations governing hedges. He noted the Council packet included the complete Planning Board record regarding this topic as well as the Council minutes from the work session.

Councilmember Moore inquired what would happen in the future when neighbors had a dispute if this ordinance were passed. Mr. Bowman answered residents would be informed the City did not regulate vegetation and inform them of options for resolving issues such as view easement, maintenance agreement, or mediation. He referred to a handout that would be distributed by Code Enforcement, "How to Deal with Neighborhood Issues."

Mayor Haakenson reopened the public participation portion of the public hearing.

**Darrell Marmion, 750 Edmonds Street, Edmonds**, supported regulating fences and hedges similarly as they usually served the same function. He noted most of the letters in the Council packet had the same opinion. He expressed concern with staff's comment that the ordinance was unenforceable and difficult to interpret and the solution that was reached to eliminate the regulation. He preferred consideration be given to potential solutions used by other cities. He referred to several other instances in the code where reference was made to hedges, specifically Title 14, 16 and 23.

**Roger Hertrich, 1020 Puget Drive, Edmonds**, agreed with eliminating regulation of hedges. He referred to the Clyde Hill regulation that stated a fence shall be any barrier which is naturally grown or constructed for the purposes of confining, a means of protection or use as a boundary. He suggested eliminating the concept of a hedge and only regulate barriers, whether naturally grown or constructed.

Hearing no further public comment, Mayor Haakenson closed the public participation portion of the public hearing.

Councilmember Moore asked staff to respond to Mr. Hertrich's suggestion regarding a naturally growing fence and Mr. Marmion's reference to the word hedge in other areas of the code. Mr. Bowman noted the fundamental question was whether an ordinance would be enforceable. He pointed out the possibility of a resident planting a natural barrier in the center of their backyard which could create as much of a problem as on the property line. If the Council chose to regulate things that grow, the Council needed to develop a definition. He agreed staff could redefine the definition to include natural barrier but regulating things that grow was problematic. He noted someone could also plant a single tree which would have the same impact as a row of 3-4 trees but single trees were not regulated.

Councilmember Moore asked how other cities addressed this issue. Mr. Bowman noted most cities did not regulate vegetation due to the difficulty.

Councilmember Moore asked staff to respond to Mr. Marmion's claim that hedge appeared in other sections of the ordinance, specifically Title 14, 16 and 23. Mr. Snyder recommended doing a word search to identify the word "hedge" in the ordinance.

Responding to further questions, Mr. Snyder explained his law firm also represented Clyde Hill which was a completely developed community that for years had governed itself via strong subdivision homeowners covenants. He stated the City could adopt a Clyde Hill-approach; however, the cost may be prohibitive. Mr. Bowman pointed out once such a change was made in the code, a base line for enforcement must be established. Options for establishing a baseline include an inventory which is very expensive or hiring an arborist to testify on individual cases.

Councilmember Wilson inquired about the cost of inventorying existing vegetation if the Council adopted a Clyde Hill-type ordinance. Mr. Bowman answered his initial estimate of a parcel-by-parcel inventory was \$100,000+. Due to the cost of the inventory, he commented that another alternative would be the use of an expert.

Responding to Council President Plunkett's question, Mr. Snyder stated if everything were grandfathered, an inventory of the existing hedges would need to be done or an arborist could be used to testify regarding the height of the hedge on the date it was grandfathered. He noted grandfathering did not eliminate the City's enforcement burden.

Councilmember Dawson noted if vegetation were grandfathered, the age of the hedge would be unknown without an inventory. Mr. Snyder noted one key principle was that one could not establish legal nonconforming rights unless the use was legally established. With buildings, structures, and manmade things, that was easy due to the need for a building permit. In this instance, to regulate something for which no permit has been required in the past, it would be the City's burden to show the use was not legally established. Mr. Bowman pointed out a large portion of the City was annexed from Snohomish County where there were no regulations regarding hedges.

Mr. Snyder noted when the ownership of a property changed, etc. it would become more difficult over time to establish the height of vegetation at the time it became nonconforming. Councilmember Dawson inquired whether hiring an arborist to testify on a case-by-case basis was a workable solution. Mr. Snyder answered an arborist would rely on information such as standard growth patterns and weather data to establish normal annual growth. He stated although it was possible to obtain that testimony, it required a great deal of preparation and expense.

Councilmember Dawson questioned whether the arborist's testimony would provide assistance if an inventory were not done first. Mr. Snyder agreed in many situations it would be difficult without an inventory.

Councilmember Dawson noted if the Council chose the arborist option, it was likely the City would lose the majority of enforcement actions. She inquired about the associated costs. Mr. Bowman answered the amount of time and the cost would vary by case. There was also the issue of who paid the cost of the arborist. Councilmember Dawson inquired about the number of cases this would impact. Mr. Bowman answered staff currently had seven active cases in a three year period. He emphasized the need to provide regulations that were enforceable.

Councilmember Orvis noted the law could be enforced now for certain trees and shrubs and the issue was whether to include more plants in the definition. He suggested codifying the current interpretation the way it was being enforced now. Mr. Bowman answered the Hearing Examiner stated in his decision that the City should do something to clarify the definition.

Councilmember Orvis recalled a complainant who was required to cut some of his shrubs because they fell within the current definition. Mr. Bowman answered that decision could potentially be challenged. He explained in that instance, the hedge-like material was pyramidalis which can reach 25-30 feet. Mr.

Snyder explained another problem with codifying the low growing principle was some of the bitterest neighborhood problems were spite situations and the City may not want to encourage residents to grow vegetation that was not low growing. He noted absent hedge regulations, the common law definition would apply and those who wanted to preserve a view could buy that right.

If the Council chose the arborist testimony route, Council President Plunkett inquired whether the City could shift some of the burden to the applicant. Mr. Snyder agreed, noting that may be an instance when full cost should be required for an appeal. Mayor Haakenson raised the issue of how the arborist and applicant could enter a neighbor's yard to evaluate their shrubs.

Councilmember Wilson inquired about the current fee structure, recalling it had been the Council's policy to minimize costs to appellants. He asked whether the City was likely to receive many appeals if the appellant was asked to pay the costs. Mr. Bowman answered probably not. He noted another potential issue may be when an appellant's appeal was successful, should they get a refund of their fee?

Councilmember Moore commented that in her experience, each arborist could have a different opinion.

Councilmember Dawson asked whether Council President Plunkett wanted the appellant to bear the cost. Council President Plunkett answered he would not support the proposed ordinance and preferred the matter be referred to the Community Services/Development Services Committee to identify a better solution. Councilmember Dawson acknowledged she was uncertain whether there was a more workable solution but the issue has been discussed for many years and no good solution has been identified.

**COUNCILMEMBER MOORE MOVED, SECONDED BY COUNCILMEMBER OLSON, FOR APPROVAL OF ORDINANCE NO. 3491.**

Councilmember Marin, a member of the Community Services/Development Services Committee last year, advised it was he who recommended the Planning Board's recommendation be forwarded to the full Council for deliberation but with reservations. Although he would prefer there was a way to regulate hedges, views and privacy must be balanced. The only reasonable answer was to exercise the golden rule and before taking rash action, consider your neighbor. He indicated he would support the motion.

Councilmember Dawson pointed out this issue had been considered for a long time and government must balance what it would like to do with what it needed to do as well as balance costs. She concluded the City did not have adequate funds to conduct an inventory and without an inventory, a hedge ordinance was not workable. Although she was willing to consider another option if the Council could provide specific direction, absent an inventory, the City had no choice but to cease regulating hedges.

Councilmember Olson agreed no other workable solutions had been identified. She planned to support the ordinance.

Councilmember Wilson expressed his support for the ordinance, noting if there had been a way to effectively regulate hedges, it would have been identified by now. He recalled there had not been a solution to the problem in the 14 years he had been with the City or in his 20 year career working with public agencies in the Puget Sound area.

Councilmember Moore agreed with Mr. Hertrich's comment that citizens of Edmonds were mostly law abiding, pointing out citizens of Edmonds were also mostly neighborly. She noted the instances when this would be a problem were few and it would be better not to regulate hedges.

**MOTION CARRIED (5-2) COUNCIL PRESIDENT PLUNKETT AND COUNCILMEMBER ORVIS OPPOSED.**





## Permit Center

210 Lottie Street, Bellingham, WA 98225

Phone: (360) 778-8300 Fax: (360) 778-8301 TTY: (360) 778-8382

Email: [permits@cob.org](mailto:permits@cob.org) Web: [www.cob.org/permits](http://www.cob.org/permits)

# FENCES, WALLS AND HEDGES

AT SINGLE FAMILY RESIDENCES

(Bellingham Municipal Code 20.30.110)

## 1. HOW HIGH CAN I HAVE A FENCE, RETAINING WALL, OR HEDGE?

Fences, walls, and hedges that are located within a required yard\* shall not exceed the following height limits (see also Figure 1.):

- Front yard on an interior lot: 54”(4'6”)
- Front yard on a corner lot: 42”(3'6”)
- Side yard on a flanking street: 42”(3'6”)
- Interior side and rear yards: 72”(6')
- Vision Clearance Triangle: 36”(3')

Height is measured from the ground level adjacent to the outside edge of the wall or fence. When fences are constructed on top of walls, both are included in the calculation of height.

\* The zoning code sets height limits for fences, walls (including retaining walls), and hedges when they are located between a property line and a setback line. This area is called a required “yard”. See the “Yards and Setbacks for Single Family Homes” handout if you need to determine the required yards for your lot.

## 2. WHAT IF I WANT A TALLER FENCE, RETAINING WALL OR HEDGE THAN IS ALLOWED?

You may submit a request for an over-height fence or wall (a building permit may also be required, see question 4). An over-height fence request is subject to joint approval by the Planning and Public Works Departments.

Application forms and fee information are available in the Permit Center. You will need a site plan showing the location of the proposed fence and all buildings within 50' and an illustrative drawing of the fence, type of construction material, and the proposed height. The application also requires the written consent of all property owners abutting the proposed fence, wall or hedge.

**Tip:** Over-height retaining walls are discouraged. Terraced retaining walls separated by at least a five-foot (5') wide planting area are preferred when higher slopes must be supported. The heights of retaining walls that are separated horizontally by at least five feet (5') are not added for the purpose of determining total allowed height under the zoning code (inquire with Building Services to determine whether the terraced retaining wall will require a building permit.)

**Tip:** Sight obscuring over-height fences that extend across the full width of a lot on the street side are also discouraged. If a taller fence is desired for privacy, it should only enclose a portion of the front yard or the side yard on a flanking street.

If you are not able to obtain approval, you may consult with Planning staff to determine whether there are other options through variance or appeal.

### **3. HOW CLOSE TO THE PROPERTY LINE CAN A FENCE, RETAINING WALL OR HEDGE BE PLACED?**

There are no setback requirements if your proposed fence, wall, or hedge does not exceed these maximum height limits and does not require a building permit.

### **4. WHEN DO I NEED A BUILDING PERMIT FOR MY FENCE, RETAINING WALL, OR HEDGE?**

**Fences:** A building permit is required for fences over 6 feet high.

**Retaining walls:** A building permit is required for retaining walls if they are either over 4 feet in height measured from the bottom of the footing to the top of the wall, or supporting a surcharge (like a building or a parking area) or certain liquids.

### **5. WHERE DO I GET A BUILDING PERMIT?**

Building permits are applied for with Building Services in the Permit Center. You may submit your building permit application at the same time as your over-height fence request, but any changes required to be made to the building permit submittal by the over-height fence review are the applicant's responsibility.

### **6. DO I NEED ANY OTHER PERMITS FOR MY FENCE, RETAINING WALL OR HEDGE?**

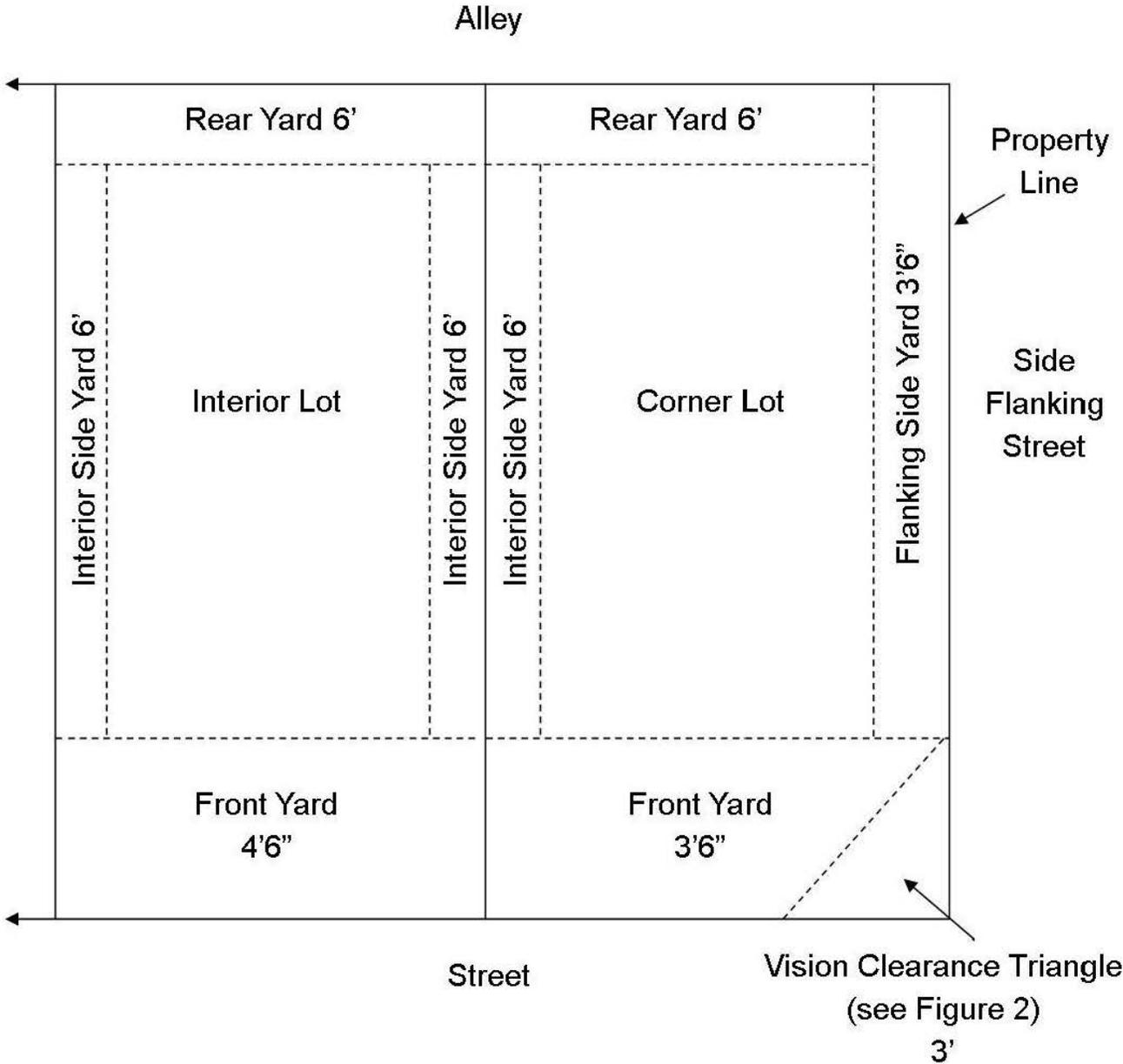
An encroachment permit is only required for the construction of a fence in the right-of-way since block or rock walls and hedges are considered landscaping and do not require a permit. However, in the event the right-of way is needed for public improvements the fence, wall or hedge will need to be removed at the owner's expense. Poured in place retaining walls, or any wall that would require a building permit, are not allowed to be constructed in the right-of-way and any trees to be planted in the right-of way require a Street Tree Permit. If you are not sure where your property lines are, Permit Center staff may be able to help identify them. If not, a survey by a Professional Land Surveyor (PLS) may be required.

## 7. HOW CLOSE TO THE EDGE OF THE ROAD OR BACK OF THE SIDEWALK CAN A FENCE, RETAINING WALL OR HEDGE BE PLACED?

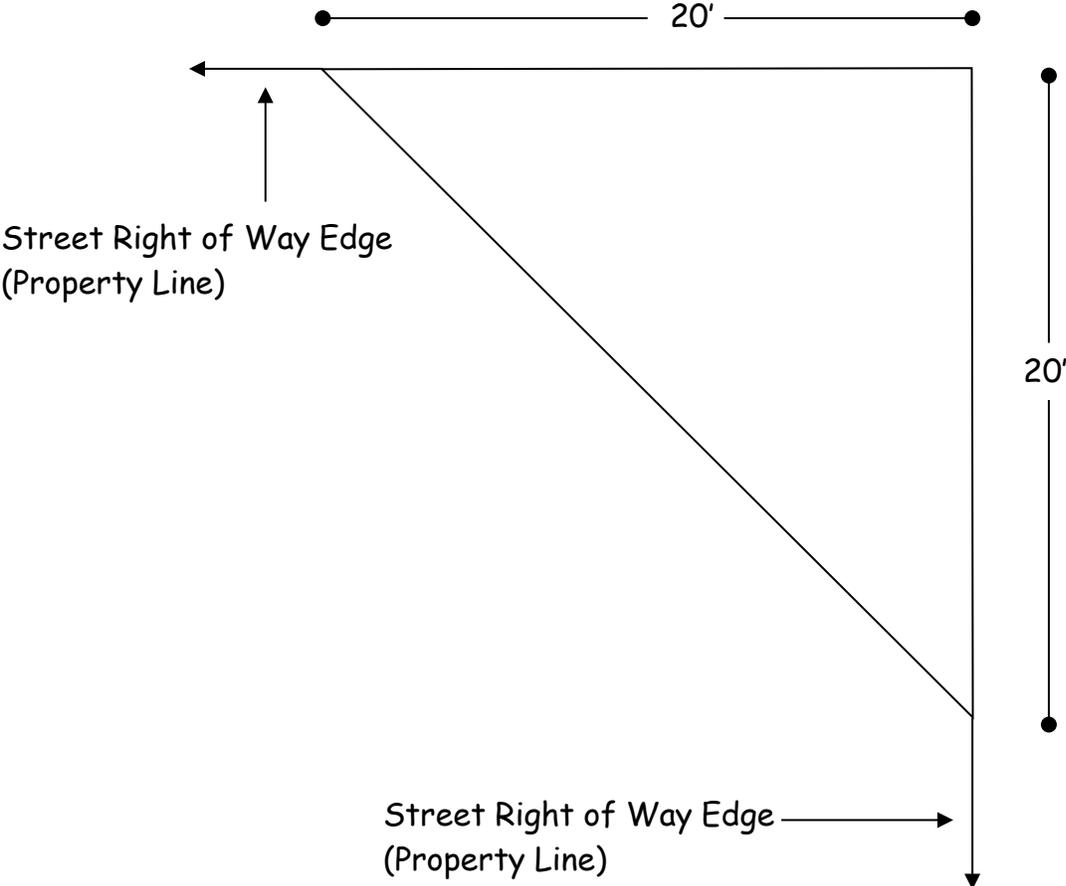
- No sidewalks present - a **10'** (ten foot) setback from the paved edge of the road is required (per City of Bellingham Development Guidelines 4-13, Construction Specifications) for clear-zone distance.
- Only a curb and gutter present - a **10'** (ten foot) setback from the face of the curb to any fixed object is required (per Development Guidelines 4-11, Lateral Clearance) for clear-zone distance.
- Sidewalk is present - a **3'** (three foot) setback from the back edge of the sidewalk is required for potential use of other street side features such as traffic signs or for access for sidewalk maintenance.

\*IMPORTANT: Utility locates are required prior to any digging per RCW 19.122.030 and although setbacks are required, they will be determined on a case by case basis. Fences are not permitted to be constructed on top of water, sanitary or storm sewer mains or any other pipelines; however landscaping is permitted, but at the owner's risk and responsibility in the event maintenance or repairs are required. Contact Public Works Staff at the Permit Center for assistance.

8. Figure 1. Fence, Wall and Hedge Height Limits when located in Required Yards



**Figure 2. Vision Clearance Triangle**





## Chapter 21.10 FENCE, HEDGE AND VISION OBSTRUCTION REGULATIONS

Sections:

**21.10.050 Purpose.**

**21.10.100 Fence and hedge standards.**

**21.10.200 Electric fences.**

**21.10.300 Barbed wire fences.**

**21.10.400 Vision obstruction by signs along public streets.**

**21.10.900 Exceptions.**

### **21.10.050 Purpose.**

The purpose of this chapter is to provide regulations for fences, hedges, and other partially or totally vision obscuring installations to assure that desirable objectives of providing privacy, security, and screening of certain uses from streets and less intense uses can be met while minimizing undesirable obstruction of views, light, air, and motorists' and pedestrians' vision. It is recognized that along streets these goals may conflict. Fences along streets provide privacy and security, but long expanses of such fencing generally are undesirable due to the visual monotony and restricted vistas such expanses create. Moreover, fencing needs along streets differ between front yards, which are traditionally open and unobscured and contain vehicular access to streets, and side and rear yards, where family activities more often take place and thus require more privacy. Therefore, it is further stated that exceptions to the regulations of this chapter to allow site-screening fences in front yards are strongly discouraged and that where these regulations allow a continuous expanse of site-screening fencing along side and/or rear property lines abutting a street, the adverse aesthetic impacts of such fencing should be mitigated. (Ord. 2020 § 6, 1994; Ord. 1473 § 1, 1985; Ord. 1257 § 1, 1982)

### **21.10.100 Fence and hedge standards.**

The following regulations shall apply to all fences, hedges, and other vision-obscuring structures:

#### **A. Height and Composition of Fences and Hedges, and General Standards.**

1. Vision-Obscuring Fences and Hedges. "Vision-obscuring fences and hedges" shall mean solid or partially open fences and hedges more than three feet in height, but not exceeding six feet in height or eight feet in height with an attached adornment (i.e., arbor, trellis, or other decorative features attached on the top of a fence) in residential-zoned areas and not exceeding eight feet in height in commercial-zoned areas. Maximum height shall be measured from the elevation of the ground adjacent to the fence or hedge on the higher side.

2. Non-Vision-Obscuring Fences and Hedges. "Non-vision-obscuring fences and hedges" shall include solid or partially open fences and hedges not exceeding three feet in height, and open fences not exceeding six feet in

height or eight feet in height with an attached adornment in residential zones and eight feet in height in commercial zones. "Open fences" shall mean those fences consisting of open chain link, widely spaced board rails or other materials which provide adequate driver visibility through the fence. Rail fences shall consist of horizontal rails not more than four inches wide and at least one foot between rail edges. Deviation from horizontal rails and from these dimensions may be allowed, providing the applicant can demonstrate to the satisfaction of the appropriate city officials that such deviation will provide at least as much visibility through the fence. Maximum height shall be measured from the elevation of the ground adjacent to the fence on the higher side; however, within sight distance triangles (see subsections (B)(1)(b) and (B)(1)(c) of this section) maximum height of solid or partially open fences and hedges not exceeding three feet shall be measured from the elevation of the street adjacent to such sight distance triangle.

3. Maintenance. All fences and hedges shall be maintained in a condition of repair so as not to be dangerous to human life or a danger to the property.

4. Conflicting Limitations. Where the limitations of this chapter conflict with site-screening or fencing required by this or other city ordinances, requirements relating to the site-screening and other required fences shall apply, subject only to adequate provisions for driver visibility.

5. Continuous Fencing Along Streets. Where continuous fencing along a street between intersections is allowed due to the length and/or number of side and/or rear lot lines abutting that street, landscaping shall be required between the fence and the property line in order to mitigate the adverse aesthetic impacts of such fencing. Where such landscaping is required, the fence may be built along the property line except for offset sections to contain the landscaping.

Such landscaping shall consist of ornamental landscaping of low plantings and high plantings. The minimum height of trees shall be eight feet for evergreen trees and 10 feet for all other species. Trees shall be spaced a maximum of 25 feet on center with branches eliminated to a height of six feet where necessary to prevent vision obstruction. Low evergreen plantings or a mixture of low evergreen and deciduous plantings with a maximum height of 30 inches, in bark or decorative rock, shall be provided so as to achieve 50 percent groundcover within two years.

#### B. Location of Fences and Hedges.

1. Residential Zones. Non-vision-obscuring fences and hedges may be located on any portion of a residential-zoned lot. Vision-obscuring fences and hedges may be located on portions of a residential-zoned lot other than the following:

a. Within 15 feet of the front lot line.

b. Within a triangular area at street intersections. Such "intersection sight distance triangle" is defined as having two sides of 30 feet, measured along the property lines from the property corner at the street intersection, and a third side connecting the ends of the two aforementioned sides.

c. Within a triangular area adjacent on one side to a street, and on a second side to a property having frontage on and requiring access from that street. Such “driveway sight distance triangle” is defined as having two sides of 15 feet measured along the property lines from the property corner common to the subject and adjacent property, and a third side connecting the end points on the two aforementioned sides. If any adjacent lot is undeveloped, it shall be construed as having access from all adjacent streets until the direction of access has been established, either by development or by waiver of right of direct access as per RCW [58.17.165](#).

d. However, fences, walls and hedges between three and six feet in height or fences up to eight feet in height with an attached adornment that comply with applicable design guidelines may be located in any portion of a multiple-family residential-zoned lot as long as they are not located within intersection and driveway sight distance triangles, do not obstruct driver and pedestrian visibility, comply with applicable Lynnwood Citywide Design Guidelines, as adopted by reference in LMC [21.25.145\(B\)\(3\)](#), and are approved through project design review (Chapter [21.25](#) LMC).

2. Commercial Zones. In commercial zones, vision-obscuring or non-vision-obscuring fences or hedges up to eight feet in height may be located on side and rear property lines and within side and rear yards, but not nearer to any public street than a point equal to the closest part of any building thereon to that street.

However, fences, walls and hedges up to six feet high that comply with applicable design guidelines may be located in any portion of a commercial-zoned lot as long as they are not located within intersection and driveway sight distance triangles, do not obstruct driver and pedestrian visibility, comply with applicable Lynnwood Citywide Design Guidelines, as adopted by reference in LMC [21.25.145\(B\)\(3\)](#), and are approved through project design review (Chapter [21.25](#) LMC).

C. Referrals to Hearing Examiner. Any fence or wall approved through project design review (Chapter [21.25](#) LMC) does not have to be approved by the hearing examiner. The hearing examiner may review applications for fence permits in the following situations:

1. Appeal. As an appeal of an administrative determination when:
  - a. An applicant proposes a fence which he/she believes meets the stated purpose of this section, but does not strictly conform to the regulations;
  - b. City staff believes that a proposed fence, while meeting regulations, may still obstruct visibility to such an extent that hazardous conditions would exist; or
  - c. There is a disagreement between staff and an applicant regarding interpretation of the fence and hedge regulations.

In such cases, the hearing examiner may stipulate standards for fence composition, height, and location.

2. Variance. As a variance, when an applicant believes the regulations of this chapter cause hardship. (Ord. 3192 § 5, 2016; Ord. 2388 § 6, 2001; Ord. 2020 § 6, 1994; Ord. 1582 § 1, 1987; Ord. 1473 §§ 1, 2, 1985; Ord. 1257 §§ 1, 2, 1982; Ord. 849 § 1, 1976; Ord. 686 § 1, 1973; Ord. 615 § 2, 1971; Ord. 190 Art. X § 10.1, 1964)

#### **21.10.200 Electric fences.**

Electric fences are permitted provided they comply with the requirements in this section.

An electric fence using an interrupted flow of current at intervals of about one second on and two seconds off shall be limited to 2,000 volts at 17 milliamperes current. All electric fences shall be posted with permanent signs a minimum of 36 square inches in area at intervals of 100 feet, stating that the fence is electrified. Electric fences manufactured by an established and reputable company and sold as a complete assembled unit carrying a written guarantee that complies with the requirements of this paragraph can be installed by an owner if the controlling elements of the installation carry a "U.L. Approved" seal. (Ord. 2020 § 6, 1994; Ord. 190 Art. X § 10.2, 1964)

#### **21.10.300 Barbed wire fences.**

No fences incorporating barbed wire are permitted except that barbed wire may be used on top of a six-foot high solid or chain link fence surrounding a public utility, an industrial plant site or a whole property, or barbed wire may be used when the fence is not a property line fence. (Ord. 2020 § 6, 1994; Ord. 190 Art. X § 10.3, 1964)

#### **21.10.400 Vision obstruction by signs along public streets.**

The legal setback for signs shall comply with the sign regulations of Chapter [21.16](#) LMC. This limitation does not apply to signs established or required by a public agency to service a public purpose. (Ord. 2310 § 29, 2000)

#### **21.10.900 Exceptions.**

The director may allow fences that do not conform to the regulations of this title at the following situations if the director finds that such fences are needed to protect the public health and safety:

- A. Outdoor recreation establishments or park and recreation facilities; or
- B. To prohibit illegal dumping.

As part of approving fences under this section, the director may impose conditions or limitations on fences allowed under this section in order to insure that such fences conform with the purpose and intent of this chapter and this title. (Ord. 2295 § 15, 2000)





# Citywide Tree Code Amendments Kirkland Zoning Code Chapter 95

## Public Engagement Plan

### Contents

1. Purpose
2. Approach
3. Stakeholder Meeting Format
4. Event/Meeting Participation
5. Emails & Letters
6. Public Comments
7. Outreach Materials

## 1. Purpose

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Regularly-occurring code updates allow an opportunity to review code effectiveness, ensure codes remain relevant, are consistent with best available science and align with **the community's vision**. The purpose of the 2018 tree code revision is to support the goals established in **Kirkland's** Urban Forestry Strategic Management Plan and the Comprehensive Plan, to address issues and challenges that have arisen since the last tree code revision (2010) and to update the code so that it is effective and practical to use.

## 2. Approach

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As part of scoping the tree code amendment project, the Planning Commission directed staff to develop a schedule and outreach plan that would encompass key milestones and stakeholders. With guidance from **David Wolbrecht, the City's Neighborhood Outreach Coordinator**, Planning staff developed this approach and sought a wide variety of perspectives for the Planning Commission and ultimately, City Council to consider.

Public engagement occurred through the use of three formats: Stakeholder Groups, City-wide Events and Neighborhood Meetings, and Correspondence submitted to the City. A webpage was created to inform the public on details about the project such as public meeting dates, potential code amendments and links to resources.

Anyone interested in receiving updates on the code amendment project could subscribe to a listserv through the project webpage. As of October 30 there were over 850 subscribers to the tree code amendment listserv.

In late October, **the City's Communications Program Manager Kellie Stickney** employed the use of press releases, **the City's weekly email newsletter, and social media** (Facebook, Twitter, Nextdoor) to solicit public comments on proposed code language.

## 3. Stakeholder Meeting Format

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Staff formed two stakeholder groups consisting of citizens that have demonstrated or expressed an interest in urban forestry regulatory issues: citizens concerned with the protection of trees, the rules governing trees on development sites and with tree removal. Recruitment for each group was supplemented by support from the Finn Hill Neighborhood Alliance and the Master Builders Association, although each group did not consist exclusively of members of each affiliation. The separate groups met on September 17 and 21, 2018.

Staff sought to proactively address implicit bias that as individuals, might unconsciously bring to this process. Participants were informed that a facilitator who was not familiar with the tree code would guide discussions to extract simple statements in response to

identical questions posed with each group. Aside from a short introduction and a limited **amount of clarifying questions provided by the City's Urban Forester, there was little** interaction between staff familiar with the tree regulations and the participants.

Participants were given the following prompts:

- What are your concerns with the current tree code?
- "A successful tree code in Kirkland is \_\_\_\_."
- "A successful tree code in Kirkland has \_\_\_\_."

The last 2 questions were formatted to obtain specific attributes or features of a **"successful" tree code**. Each of the group sessions generally lasted two hours.

Four common themes heard from the first group were:

1. The code is not effective
2. Tree protection, inspections and code enforcement is inadequate on development sites
3. Developers are either unaware of the codes or are exploiting loopholes
4. The codes do not relate to long-range canopy cover goals

Four common themes heard from the second group were:

1. The code is difficult to use
2. The code is too subjective, allowing the City to exercise too much authority with code interpretations such as with **'High Retention Value'** trees
3. The code needs to be more prescriptive, with predictable outcomes, yet be flexible enough to accommodate anomalies such as odd-shaped lots
4. Certain definitions such as 'grove' are not clear

Overlapping areas of interest for potential code amendments amongst all groups and correspondence includes:

- Address areas in the code so it is more prescriptive, with predictable outcomes
- Redefine trees of merit/trees worthy of retention to reflect size, condition and location
- Improve tree protection, inspections and code enforcement on development sites

Participants in the stakeholder groups were actively engaged in the exercises, graciously acknowledged staff efforts to accurately capture their perspectives and were genuinely pleased to be **involved in the City's tree code amendments**.

It was observed that in both groups, there were many incorrect assumptions made about the code, pointing for the need to provide ongoing public education beyond the implementation phase of this code revision. One common area of confusion between

the two groups was the categorization of trees of merit, or trees that are considered worthy of retention on development sites.

#### 4. Event/Meeting Participation

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In addition to the stakeholder meetings, staff utilized multiple events to inform the public and answer questions on how the current code works, about the code update process and how to get involved. All public engagement events and meetings are listed below:

DATE	EVENT/GROUP	# OF PARTICIPANTS
May 16	<i>Highlands Neighborhood Meeting</i>	20
Aug 23	<i>Master Builders Quarterly Meeting</i>	14
Aug 31	<b><i>Juanita Farmer's Market</i></b>	25
Sept 8	<i>Crossing Kirkland Event</i>	15
Sept 17	<i>Stakeholder Meeting #1</i>	10
Sept 21	<i>Stakeholder Meeting #2</i>	8
Sept 25	<i>Everest Neighborhood Meeting</i>	6
Oct 6	<i>City Hall for All Event/Presentation &amp; Conversations</i>	20
Oct 10	<i>Kirkland Alliance of Neighborhoods (KAN) Meeting</i>	22
Oct 17	<i>Finn Hill Neighborhood Alliance Meeting</i>	35
		TOTAL: 175

**The Juanita Farmer's Market and Crossing Kirkland events involved a pop-up tent and table setup with signage posing the question, "If you were in charge of trees in Kirkland, what kind of rules would you make?"** (see Outreach Materials). Writing materials were provided so participants could jot down their responses on index cards, **which were placed in a "comment box."** Staff fielded many questions about the existing tree code and held conversations with citizens about the potential code revisions.

The City Hall for All event consisted of the same table setup with the addition of a 20-minute presentation on how the current code works, the code update process and how to get involved. At all tabled events, staff handed out postcards that list the project webpage URL so that interested parties could find out more about the tree code update and subscribe to the project listserv (see Outreach Materials).

Generally speaking, participants at these events expressed an appreciation for trees and the natural environment and conveyed a positive reaction that tree protection codes

exist in Kirkland. Four main themes from the conversations and comments at these events include:

1. Retain large trees
2. Plant trees
3. General knowledge on the benefits that trees provide
4. How to address tree-sidewalk conflicts

The Neighborhood and Master Builder Quarterly meetings provided an opportunity to describe the code updates and to field questions about the current code, potential changes to the code and the amendment process.

#### 5. Emails & Letters

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Emails and letters regarding the city-wide tree code updates addressed to the City Council, Planning Commission, Urban Forester or Planning Department were compiled and attached to the November 8, 2018 Planning Commission staff memo (Attachment 10). There are about 18 letters and emails that were received up to noon October 31, 2018, some of which were sent from key stakeholder groups. The subject matter in the letters and emails generally covered potential code amendments or similar issues that have been previously outlined in Planning Commission memos or discussed in public meetings. Correspondence topics include:

- Tree removal allowances
- Tree planting requirements per lot size
- Tree canopy cover/tree credits
- Tree canopy goals
- Code enforcement
- Exceptional/Heritage/Landmark/High Retention Value trees (trees of merit)
- City authority to require permit applicants to seek variations to development standards for the retention of existing trees
- Integrated Development Plan review (for shortplat/subdivisions)
- Tree protection fencing, signage
- Maintenance requirements for retained and newly-planted trees
- Fines for tree code enforcement
- Native trees and vegetation
- Benefits of trees
- Perceived inequity between allowed tree removal with development and tree removals on private property where no development occurs

## 6. Public Comments

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### **Question: if you were in charge of trees in Kirkland, what kind of rules would you make?**

1. No hurting [trees] unless [they're] weak and going to [be removed] anyway
2. Kirkland's assets are its tall, mature trees – keep our neighborhoods green!
3. Grow More [trees]!
4. More compost bins available 😊
5. I would every time you cut down 1 tree you have to plant 2 native trees
6. I wouldn't cut any of them down!
7. [Plant] as many trees as possible
8. Increase tree canopy coverage goal, [and] maintain, don't cut down mature trees, especially for construction of new mansions. Study urban heat island effect, health data & localized cooling. Lift up sidewalks & trim roots that have heaved the pavement instead of removing and replacing trees.
9. Balance growth/tree retention, [better coordinate] different [City] departments' interests with trees
10. [There should be more] equity between homeowners' [tree removal] allowances vs. developers [tree retention requirements]
11. We need trees for privacy and sound/dust barrier
12. More trees [for their] benefits
13. [Unless] potentially hazardous, save for squirrel habitat
14. Preserve the large old growth, replace with greater than what is taken away (trees)
15. Be more diligent with street/park tree maintenance, especially street/sidewalk clearance
16. I'm all for preservation of trees, but please be open minded that in certain situations, pruning and/or cutting is necessary
17. [Allow] payment in lieu of replacement trees on private property [so that replacements can go somewhere void of trees] like Spinney Park
18. Trees/veg cleared from sidewalk
19. Cut down trees & sell 'em for City \$ funds
20. Allow in critical areas [tree] prun[ing] for light
21. If a tree blocks my view, I want it cut down
22. Tree code enforcement [should be] part of the tree code update. [Require] stop work order for people who break code. Suspend or revoke their business license. Fix loopholes
23. More trees and understory plants everywhere. Preserve large trees
24. Clarify the process by which you can have a tree declared unhealthy or unsafe, and therefore you can cut it down without affecting your annual limit

### **Stakeholder Question: What are your concerns with the current tree code?**

25. Tree credit [requirement is] inconsistent with goals for canopy coverage. It incentivizes native forest conversion into a non-native forest. Only way it works is with non-native deciduous trees.
26. Credits/rules don't align with tree growth/biology. Should be using PNW data and survival rate
27. Sidewalk planting strip longevity messing up sidewalk [root growth of street trees in sidewalk strips leads to broken pavement]
28. Unfair processes/double standard between residents and developers
29. Statistics on canopy cover [should] only come from [what's within] City jurisdiction or boundary lines
30. [That] developers [don't] know their role in city-wide canopy goals
31. Developing [occurring] despite consequences of fines, etc. Up front work [occurs such as tree retention plans] but [there's] no follow-through with code enforcement.
32. No protection for adjacent property owners' trees
33. Need better signage for tree protection
34. [Concerned with] preserving trees with trail systems. Walkability and root zone [conflict]
35. [Code is] onerous and expensive for residents [and small contractors] specifically re: [tree protection] fencing. Doesn't make sense. [Even with fencing, there are] impacts [to] tree/plant health

36. [Code] too specific, doesn't achieve general goals
37. There is a lack of:
  - Developer awareness on tree canopy maximization
  - Tree categories (significant, heritage, etc.) and incentives to save them
  - Maintenance bond
  - Enforcement and fines correlated to tree size
  - Understanding of [protected tree] maintenance responsibility of developer/owner
  - IDP [requirement on a citywide basis]
  - Financial support from City for resident tree preservation [City-provided incentive such as a tax break or permit/zoning regulation relaxation for retaining mature trees; this would be the flip side of usual policy that prohibits or penalizes tree removals]
38. Tree preservation isn't coordinated between various agencies/utilities
39. Where in the process [is] the tree standard created and applied [questions the basis for the City's current credits requirement and how it's applied to retain trees or plant new trees]
40. Interpretation of code language [too lax] ("if feasible" etc)
41. Notice of development doesn't have tree plan, [is] not online.
42. More equality with 2-per 12 months tree removal, specifically regarding larger properties
43. [Code is] inflexible for atypical lot dimensions
44. [Code is] unpredictable:
  - [It's an] outlier from other building codes
  - Updates [are unpredictable]
  - Interpretation/implementation [is not consistent] between different staff and over time
  - [In how tree] credits [are] practice[d]
  - [There's] no objective measure
45. [Needs] clearer definitions and environmental connection [to] "significant" and "exceptional"
46. [Too] subjective standards, especially staff consistency [over time]/training [for new staff]
47. Lack of "grove" definition
48. [Code] minimum[s are] subjective, [result in] additional requirements as opposed to other building code minimums. [Results in unnecessary] one-sided negotiation [that favors staff].
49. Process timing too swift, not enough time for review
50. [In regards to] "canopy" [cover] vs. [trunk diameter at] breast height:
  - DBH is easier to measure
  - Canopy can be manipulated
51. [Concerned with] implementation of [increased] tree replacement [requirements] and [having] arborist on site during [construction]

**Stakeholder - complete this statement: a "successful" tree code in Kirkland is...**

52. One that helps homeowners plant, replace, manage trees depending on where they are [located]
53. One that provides construction solutions to owners when they have a tree [retention] problem
54. One that consistently meets with 40% canopy goal for City boundaries only
55. One that incentivizes native tree usage via tree credit [requirements]
56. Integrated with rest of development code
57. Accommodating of different neighborhoods' character
58. Integral, connected to policy goal of healthy, sustainable urban forest/tree canopy goals
59. Correlated between lot size and tree code policy with balance between simple and cost effective
60. Objective
61. Accommodating of the original intention of a plat layout
62. Respectful of property rights
63. Takes into account other advancements in environmental tech [such as] water and solar
64. Predictable and consistent
65. Flexible [with a] transparent process to [address] problematic anomalies of code [that are] not really working
66. Equitable
67. Balanced between predictable and flexible

68. Accommodating of a fee program in lieu of [tree] replanting [on site]
69. Accommodating of tree replanting [vs. tree retention]
70. Consistent [with] meaning/definitions for decision-making rationale and construction methods (root zones)
71. Not requiring an on-site arborist

***Stakeholder - complete this statement: a “successful” tree code in Kirkland has...***

72. Contractors sign [an] affidavit for tree responsibilities over time [after development]
73. Precedence over other development processes
74. Ongoing financial responsibility through HOA or similar [legal] vehicle for maintenance of PNA/required [tree] replanting or a bond for x years [after development]
75. Mandatory education for developers, including [required trees] follow up
76. Clear [tree protection] plans included on [public] notices [and job sites] with [code] enforcement [phone] #
77. Economic incentives for public to do the right thing
78. Acknowledgment of “downstream” consequences of [tree] removal, [tree] removals included in stormwater assessment
79. A proactive city-wide education campaign and partnership with Lake Washington Technical College to increase availability of native plants and shrubs and drought-tolerant varieties to homeowners, city parks and public works departments
80. Clear online resource to identify tree problem and Next Steps [for permits]
81. Maintenance requirements for City-owned property and conservation easements
82. Different tree classifications [for] species, cultural [significance] and heritage [trees], etc.
83. A clear process flowchart similar to LID process, especially for “flexible” situations [such as] difficult lots
84. Third party appeals/arbitration process with option for Hearing Examiner
85. An IDP option [as opposed to requiring it for all shortplat/subdivisions citywide]
86. No IDP requirement [would rather it be an option]
87. “Black and white” clear definitions, standards
88. A better definition of “grove”
  - Science-based qualifications
  - [Has a] legal protection [mechanism that’s] not [an] easement
  - When [is it] applied?

7. Outreach Materials

**Get Involved!** 

*...provide your input on Kirkland's tree code*

The City's last tree code update was in 2010...  
Share with us your thoughts on how to efficiently  
and sustainably manage Kirkland's urban forest.



Check for project updates online at  
<https://www.kirklandwa.gov/treecodeupdates>



Send your comments to  
[dpowers@kirklandwa.gov](mailto:dpowers@kirklandwa.gov)

## KIRKLAND TREE CODE SUMMARY

	TREE REMOVAL SCENARIO	IS A PERMIT REQUIRED?	DETAILS
PRIVATE PROPERTY	Remove any 2 trees	<b>No, however...</b>	Notify Planning Dept. to prevent Code Enforcement response
	Remove additional hazard or nuisance trees	<b>No, if...</b>	Condition is obvious in a photo
	Remove hazard or nuisance trees in critical areas	<b>Yes</b>	Arborist report, replanting may be required
	Emergency/urgent tree removal	<b>No</b>	Contact Planning Dept.
	Prune or trim trees	<b>No</b>	No topping allowed
	Tree removal with development	<b>Yes, with development permit</b>	-Arborist report required -Tree protection required on site
PUBLIC PROPERTY	Prune/remove street trees	<b>Yes</b>	Public Works may prune/remove street trees by request or at their discretion
	Prune/remove park, CKC, and street trees	<b>No, City service</b>	Property owner requests may not be granted



*If you were in charge of trees in Kirkland...*



**What kind of rules would you make?**

Share with us your thoughts on how to  
efficiently and sustainably manage  
Kirkland's urban forest.





From: Roger Stone [kmsmattdan@gmail.com]  
Sent: Monday, February 05, 2018 9:46 AM  
To: Toby Nixon  
Subject: Tree ordinance--Here's my take

I've lived in my North Kirkland home for 34 years. We planted some firs and a willow for privacy and water uptake. They are now tall enough that if they fell, they'd hit neighbors East and North of me. I decided to re-landscape my lot for privacy, drought tolerance, lower maintenance, and to remove hassles and liabilities. I hired a tree service and a landscape design company. I was advised that Kirkland had a tree ordinance allowing me to only take down 2 significant trees per 12-month period. Based on the number of trees I wanted to replace, that would have been a 4-year period.

But if I get an arborist to say a tree should come down (a \$150 per tree report fee) and a \$400 fee to the City to even consider it, I could take down 3 more that the arborist could make a case for taking down. That would still leave me 2 years from replacing the trees and undertaking my landscape plan. My plan was to grind the stumps, and dig them out, then replant slower growing privacy-enhancing trees

Now, I don't live near the water. My lot is not an iconic view lot. My trees are not shading a lovely lane. My trees are just Douglas firs that were planted too close together, got too tall, and are dropping large limbs in windstorms. They are over 100 feet tall.

I understand oxygen production. Kirkland's policy means there will be 2 less trees every year over 4 years, when I would replant all new trees this spring if permitted. I understand wanting a pretty neighborhood. Kirkland's plan puts my landscape effort back 4 years. I understand privacy. Kirkland's plan puts privacy for myself and 3 neighbors back 4 years.

There are other issues re-landscaping my lot and costs involved. Paying an arborist \$150 per tree to say the trees have problems adds to my costs and does not move re-landscaping forward at all. Paying the City to "consider" my application is an insult. Does the City own my trees? No, it does not. Would it assume liability if the trees fall on a neighbor? I doubt it. Will it offer any relief or credit for the fee? No, it will not. Does the City gain by me waiting to replant? No, it does not. Does the City offer a replanting credit to make me whole for their fees? No, it does not. If it is truly interested in the tree cover for the City, one would think re-planting would be encouraged.

So, does the City offer a variance for people wishing to replant? No, it does not. Does it offer an appeal process? No, it does not. The City has variances and appeals for lots of other processes, but not this? Why is that? Is not this taking of my property rights, my trees, and my right to landscape my lot? Yes, it is.

Thanks for your time and consideration

Roger Stone

**From:** Toby Nixon  
**Sent:** Tuesday, May 29, 2018 9:58 AM  
**To:** Kurt Triplett; Eric Shields  
**Subject:** RE: Tree ordinance--Here's my take

Following up on this. Do you know if this is being considered as part of the tree ordinance update -- allowing taking of more than two significant trees at once if there is an approved tree replacement plan?

Toby Nixon | Council Member | City of Kirkland, Washington  
[nixon@kirklandwa.gov](mailto:nixon@kirklandwa.gov) | [www.kirklandwa.gov](http://www.kirklandwa.gov) | V: +1 425 587 3536 | M: +1 206 790 6377 | F: +1 425 650 7999  
*Emails to and from city council members are subject to disclosure under the Public Records Act, RCW 42.56*

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**From:** Karen Story [<mailto:karen@nwnative.us>]  
**Sent:** Monday, July 30, 2018 1:01 PM  
**To:** City Council  
**Cc:** Deborah Powers  
**Subject:** I support stricter enforcement of tree regulations

Dear Council,

I support the [stricter tree regulations](#) proposed by staff and strongly supported by the Planning Commission, including higher fines for unauthorized removal and for repeat offenders.

As stated in the [Urban Forest Strategic Management Plan](#) adopted by Council, trees improve air and water quality and contribute to human health, safety, community character, and economic stability.

Now, it is cheaper for some developers to pay the fines than to protect trees.

Trees are disappearing at an alarming rate as bigger homes are being built.

I urge you to act quickly to protect our trees.

Thanks,  
Karen Story

**From:** David Archibald [<mailto:dparchibald@hotmail.com>]  
**Sent:** Wednesday, September 05, 2018 6:21 PM  
**To:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Subject:** TREES IN KIRKLAND

Hello,

I understand from the Planning Department that you are consulting with the City of Kirkland on ordinances regarding trees. I live in the West of Market area and hope you will take my input into consideration.

Most lots in this area, as well as the whole of Kirkland, are small - less than 1/2 acre. Yet the City condones large hedges on property lines. I have a Leyland Cypress hedges on one side which I am sure you are aware grows 2+ feet per year. This hedge is at least 13 feet in height after pruning last year. My neighbor does not feel it their responsibility even though it is on their property because there are no ordinances regarding height and/or shrubs infringing on someone else's property. It blocks the sun on a small lot and penetrates into my yard. I prune as much as I can and haul out the debris but it is so high now that I must hire someone at my own expense to do this work. This is an outrage. Leyland Cypress is not suitable for small lots. Many other trees are in this same category ie Birch, Cedar, etc. The height of hedges at property lines between lots should not be greater than 7 feet. On the other side of me, my neighbor has fruit trees: a fig 2 1/2 stories high, obviously overgrown, unpruned apple trees covered in caterpillar webs and sick overgrown plum trees. The fruit falls in our yard. They attract brown squirrels and worse, rats. I paid \$3,000.00 to prune trees on both sides. I feel this inequitable.

I ask you to recommend to the City of Kirkland that the homeowner of the property in which the trunks are located are responsible to contain and care for them not the adjacent property owner. Rats are a problem. Homeowners who grow fruit trees should be forced to maintain them and if not and a complaint is made, the owner of these trees should remove them.

Lots under 1/2 acre should not have inappropriate large trees. It had serious consequences to adjacent lots and causes animosity.

I would appreciate your voicing these concerns and affecting equitable solutions. I am sure I am not alone.

Thank you,  
Linda Archibald

From: Pat Jovag [<mailto:pjovag1@earthlink.net>]

From: Pat Jovag [<mailto:pjovag1@earthlink.net>]  
Sent: Thursday, September 13, 2018 9:45 AM  
To: Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
Subject: Need information on tree removal

Hi,

I live in Bridle Trails Neighborhood and have noted that developers just clear cut property be it for a short plot or a large development. Individual property owners will move into an existing home and remove trees. I would like to know what the existing regulations are for these scenarios. And also what the city has in mind when the upcoming review of Kirkland's policy? When will this review be scheduled? Closed or open meeting? I am quite concerned about the escalation of tree removal since the BT Neighborhood is a forested area.

Sent from my iPhone

**From:** Pat Wilburn [[mailto:patrick\\_wilburn@hotmail.com](mailto:patrick_wilburn@hotmail.com)]  
**Sent:** Monday, September 24, 2018 1:12 PM  
**To:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Subject:** Chapter 95 question

Hi Deb -

I looked through the potential changes to Chapter 95 for Trees, and had a question. There appears to be a desire to prevent girdling as a pre-development practice. I wanted to confirm that the City still supports girdling as an appropriate technique for wildlife snags. The City has in the past guided us (perhaps required us) to girdle trees as part of converting that tree to a wildlife snag, to ensure the wildlife snag does in fact remain a snag.

Please confirm. I'm a bit worried that the revised language on girdling will not take into account the differences between (a) girdling related to development, which appears to be what the City is worried about and (b) girdling done as part of work to convert trees to wildlife snags.

Thanks,  
Pat

**From:** Susan Vossler [<mailto:vosslers66@gmail.com>]  
**Sent:** Tuesday, September 25, 2018 12:19 AM  
**To:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Subject:** tree ordinance comments

Hello!

I arrived late to the meeting at City Hall on Tues, 9-18.

I didn't comment as I was just absorbing what was being said.

With some thought, I'd like to provide some comment.

I believe a good tree ordinance should be realistically enforceable. I believe cutting trees down can be enforced. Replanting trees can not.

I also see a city tree ordinance aligning with the city's commitment to K4C. Retaining a tree canopy is part of a commitment to mitigating climate change. Citizens like me will be holding our city accountable to this commitment.

<https://www.kingcounty.gov/services/environment/climate/strategies/k4c.aspx>

Thank you,  
Susan Vossler

Alice L. Blanchard  
11531 Holmes Point Drive NE  
Kirkland, WA 98034  
360-221-7040 - Office  
ablanchardlaw@whidbey.com

September 27, 2018

To: Kirkland Planning Commission, [planningcommissioners@kirklandwa.gov](mailto:planningcommissioners@kirklandwa.gov)

Janice Coogan, Senior Planner,  
Kirkland Planning and Building Department; Coogan <[jcoogan@kirklandwa.gov](mailto:jcoogan@kirklandwa.gov)>

Deb Powers, Urban Forester; >> Deborah Powers <[dpowers@kirklandwa.gov](mailto:dpowers@kirklandwa.gov)>

Communication Being Sent Via e-mail:

Regarding: Comments on Draft Code Amendments to KZC Chapter 95

Dear Commissioners, Ms. Coogan, and Ms. Powers:

I am a homeowner who lives at 11531 Holmes Point Drive NE, Kirkland 98034. I have testified previously before the Planning Commission on matters involving proposed amendments to the Holmes Point Overlay (KZC 70) that were recently discussed in the spring and summer of 2018.

I have the following comments on the memoranda dated September 21, 2018 from Deb Powers.

1. I am strongly in favor of **Item #53, "Revise the tree removal allowance so its equitable across varying lot sizes."** This would allow more tree removal on larger lots, depending on lot size. The Commission recommended approval of code amendments to KZC 70 and 95 prior to this issue's presentation before the Kirkland City Council on 6/19/2018. In the overlay, this would be addressed by amending KZC 70.15.2. The specific sections dealing with tree removal on larger lots in non-PNA portions of an owner's property are:

d. Up to two trees may be removed within a five year period on properties smaller than ½ acre (21,780 sq. ft.) with a 1:1 replacement tree requirement; or

e. Up to four trees may be removed within a five year period on properties larger than ½ acre (21,780 sq. ft.) with a 1:1 replacement tree requirement.

f. For removal of more than four trees on properties larger than one acre within a five year period that are not exempt under KZC 95.20, a Forest Management Plan shall be submitted per Chapter 95.23 subsection 5.e KZC.

Whether KZC 95 is amended in association with KZC 70, or on its own, it should also address this issue.

**2. Item #64 "Add Heritage/Landmark Tree Definition."** I agree that the code needs to be simplified because the current definitions for high, low and moderate tree retention are confusing. I agree with the City Attorney's Office that if a definition is established for Heritage/Landmark trees, that definition should not limit the development potential of property in a way which invites due process constitutional taking litigation. I support the city's suggestion for tree preservation on private property, through Voluntary Tree Conservation Easements.

**3. Item #70 "Should High Retention Value Trees Be Protected Only "To The Maximum Extent Possible" Or Should The Code Be Revised To Require That They "Shall Be" Retained."** I support the language to the maximum extent possible" rather than requiring retention.

**4. Item #71 "Address Seemingly Competing Interests Of Tree Canopy Goals And Alternative Energy Sources."** Tree code provisions should definitely be amended to take into account that many homeowners are now wanting to use solar energy. Tree code requirements should not be so oppressive that they prevent a homeowner from installing solar on an existing structure or incorporating solar into new construction on his or her property.

**5. Item #75 "Use A Canopy Cover-Based Methodology For Retention/Planting Requirements Instead Of A Point System (Tree Density Credit) That Is Based On Tree Size."** As a homeowner who has calculated the tree credits on my property using the tree credit system, I'm in favor of retaining this system as the methodology use by Kirkland. It is a system that can be used and understood by the homeowner easily.

**6. Item #77 "Increase Tree Retention/Tree Planting Requirements City-Wide."** The contrast between the ability of all other Kirkland property owners to remove two trees every twelve months without even applying for a permit, with the restrictions that are currently still in effect in the Holmes Point Overlay, because KZC 70 has not yet been amended, is disturbing. The changes to equalize the burden, along with HPO code revisions should be coordinated.

Thank you for taking the time to consider my comments. I also appreciate the tremendous amount of time and effort that has been put into this process by Deb Powers, Urban Forester.

Sincerely,



Alice L. Blanchard

**From:** goodwin [<mailto:goodwin.hp@gmail.com>]

**Sent:** Thursday, September 27, 2018 9:49 AM

**To:** Planning Commissioners <[PlanningCommissioners@kirklandwa.gov](mailto:PlanningCommissioners@kirklandwa.gov)>

**Cc:** City Council <[citycouncil@kirklandwa.gov](mailto:citycouncil@kirklandwa.gov)>; Eric Shields <[EShields@kirklandwa.gov](mailto:EShields@kirklandwa.gov)>; Adam Weinstein <[AWeinstein@kirklandwa.gov](mailto:AWeinstein@kirklandwa.gov)>; Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>; Scott Morris <[Scott.Morris@trilogy-international.com](mailto:Scott.Morris@trilogy-international.com)>

**Subject:** Code Amendments KZC95 / Tree Management and Required Landscaping

Dear Commissioners:

In your consideration of revisions to subject code I request you guide staff to include Kirkland resolution R4986 'Urban Forestry Strategic Management Plan' (attached) into the kzc 95 amendment.

To reach our city canopy goals I feel this resolution must be codified and then made part of 95.

If the city has gained any tree canopy over time I believe it's due to annexation and not by any type of existing tree management code.

Including the principles of R4986 in kzc 95 revision will create a sustainable tree canopy management code that will allow us to reach our city wide canopy goals. Without this type of revision we will continue to get developments in the city with tree canopies similar to attached Kirkland housing track images.

Thank you,

Ken Goodwin  
11834 Holmes Point Drive  
Kirkland Wa 98034

Kirkland's legacy tree credit system and actual canopy result images

Looking at these more mature (~15-25yrs) development canopy images, one can quickly see Kirkland's tree credit system they currently practice in reality is not achieving the intended results. Are these images reflecting Kirkland's 40% canopy goal?

