



**CITY OF KIRKLAND**  
**Planning and Building Department**  
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**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Janice Coogan, Senior Planner  
Deb Powers, Urban Forester  
Jeremy McMahan, Planning Manager  
Adam Weinstein, AICP, Deputy Planning Director  
Eric R. Shields, AICP, Director Planning and Building

**Date:** June 6, 2018

**Subject:** Code Amendments for Kirkland Zoning Code Chapter 70, Holmes Point Overlay Zone, and Chapter 95, Tree Management and Required Landscaping, File Number: CAM18-00080

**Staff Recommendation**

Staff recommends that City Council receive a briefing on proposed Zoning Code amendments to the Holmes Point Overlay Zone (Chapter 70) and Tree Management and Required Landscaping (Chapter 95) and Planning Commission's recommendation for approval of the amendments.

Following the presentation, City Council should provide direction to staff on the draft amendments in preparation for final adoption.

**Background**

Introduction

The Holmes Point Overlay (HPO) Zone is located west of Juanita Dr. in the Finn Hill Neighborhood. The HPO Zone is generally dominated by the largest area of sensitive environmental features in the City, including the Lake Washington shoreline, stream corridors, steep slopes greater than 40%, and slopes susceptible to moderate and high landslide and erosion hazards.

*History of Existing Holmes Point Overlay Regulations*

The HPO regulations in Chapter 70 originated in King County to provide added protection for the area's natural features by minimizing site disturbance, requiring more stringent lot coverage requirements than elsewhere in the City, preserving 25% of each lot in a natural state, and maximizing tree retention. Since annexation, amendments to the HPO regulations contained in KZC Chapter 70 were made to require supplemental planting of trees with development permits to meet city wide tree density requirements.

### *Scope of Code Amendment Project*

The primary objective of this project is to implement the policies within the Finn Hill Neighborhood Plan for the HPO area by amending KZC Chapter 70 (HPO Zone) and undertaking limited changes to KZC Chapter 95 Tree Regulations related only to the HPO area.

Under a separate agenda item on the City Council's June 19, 2018 meeting are proposed city wide amendments to the Municipal Code to strengthen code enforcement of tree regulations, including increasing civil penalties for illegal tree removal or damage. These amendments are summarized elsewhere in this memo.

### *HPO Code Amendment Discussions with Neighborhood Plan Process*

Discussions about policies for the Holmes Point Overlay Zone and code amendments to KZC Chapters 70 and 95 began during the Finn Hill Neighborhood Plan process in 2015 – 2017. The Finn Hill Neighborhood Alliance (FHNA) was very involved during the neighborhood plan process and helped develop the policies, although input was also received from other groups and individuals. The Neighborhood Plan was adopted in January 2018. Specific policies related to the HPO strive to maintain a 60% tree canopy in the HPO zone, strengthen tree regulations and code enforcement, encourage clustered development away from slopes, limit site disturbance with development, retain trees and native vegetation on slopes, and conduct future neighborhood education programs about tree retention.

The FHNA advocated for lowering the residential density in the HPO area from eight and six dwelling units per acre to four dwelling units per acre to provide larger minimum lot sizes, encourage less density and to allow greater tree retention with development. With neighborhood plan adoption, rezones were approved reclassifying certain RSA 8 and RSA 6 zones to RSA 4 zoning.

Draft HPO code amendments were prepared last summer but rather than being adopted with the neighborhood plan, the Planning Commission recommended to the City Council that the amendments be postponed to allow more time for staff and the FHNA to continue discussions regarding code changes.

### 2018 Code Amendment Process

After adoption of the neighborhood plan, staff continued discussions with the FHNA, meeting approximately 20 times. Staff explained to the group how the existing HPO and tree regulations are administered during permit review and construction process, answered their questions and listened to their concerns and suggestions for code and procedural changes. See recent letters from the FHNA in Attachment 4.

### *Issues discussed as part of the code amendment project*

Attachment 1 of the [April 26, 2018 public hearing packet](#) includes a detailed list of 21 issues discussed with the FHNA over many meetings and identifies where there was agreement or disagreement on what changes should be made to codes and procedures. The issues focused on more stringent tree regulations and code enforcement actions the City could take to protect tree canopy in the HPO. Staff also

conducted an analysis comparing tree density credits to canopy cover (see Attachment 6 of the April 26, 2018 packet).

Below is a summary of the key issues discussed with the FHNA in the development of code amendments:

- Should the City change the method for calculating tree requirements from the current tree density credit method to a new tree canopy cover method in the HPO only?
- Should the 25% set-aside Protected Natural Areas (PNAs) be consolidated into larger PNAs with short plats and subdivisions rather than spread across individual lots, as currently required?
- How can the FHNA be assured that the code amendments will achieve the 60% tree canopy goal in the HPO? Staff explored:
  - Increasing tree density requirements outside PNAs from 30 to 50 credits per acre.
  - In addition to the 25% PNA set-aside, establishing a minimum 30% tree canopy cover retention requirement per lot, even if it would limit the development potential of a property.
  - Require all High Retention Value trees (defined in KZC 95, in setbacks and other criteria) to be retained.
  - Require maintenance bonds and follow up inspections by staff of supplemental tree and vegetation installation in PNAs and Non-PNA areas.
- Should the code require protection of "exceptional" trees anywhere on a lot even if doing so would limit the development potential of the underlying zoning of a property?
- Should the code eliminate the allowance to round up the number of lots when calculating density when the calculation results in a fraction of 0.5 or greater, or exclude easements in the density and minimum lot size in order to limit development?
- Should single family home additions or demolition trigger PNA designation and supplemental tree and vegetation requirements?
- Should homeowners be allowed to remove trees (outside of PNAs) for maintenance purposes like homeowners in the rest of the city when no development is proposed? If so, how many trees? Over what period of time? Should a permit, fee or replacement trees be required?
- Should the code prohibit tree removal associated with development if the trees are located in the public right of way?

- What more can be done to protect trees on adjacent properties during development activity?
- What inspection, code enforcement or procedural changes can be made during the development permit review and construction process to retain and protect trees? What do other cities do?

The following discussion summarizes the FHNA positions that were not ultimately supported by staff or the Planning Commission and are not included in the attached code amendments:

- Require a minimum tree canopy per lot with development. FHNA requested changing the City's current tree credit methodology to one that analyzes and projects tree canopy cover on a lot-by-lot basis, in direct correlation to overall tree canopy cover goals. Staff wrote a white paper to show the association between tree density credits and tree canopy cover (April 26, 2018 Planning Commission packet, Attachment 6). The City's tree credit system is not intended to serve as a direct measurement of tree canopy - rather, it functions as one of many tools to help achieve the City's canopy goals. Since its adoption in 2006, the tree credit system has worked well as a relatively simple metric to measure and administer (for staff, arborists, developers and lay persons) tree retention and planting standards.

Staff does not recommend using a different tree retention requirement system in the HPO than the mechanism currently in use city-wide because of the desire for uniform tree retention calculation methods, and staff workload capacity issues. A different methodology for calculating requirements may be considered on a City-wide basis when Chapter 95 KZC is amended and current canopy data is available as part of the city-wide tree canopy assessment. Both the Planning Commission and City Council previously gave direction that they do not support two separate tree retention requirement systems.

In response to input from the FHNA staff included in the draft code amendments for KZC 70 provisions to significantly increase tree density credits and require that a landscape architect confirm (on development sites) both the existing and supplemental trees will grow to achieve a 50% tree canopy cover in the non-PNA area and 100% in the PNA area.

- Establish an exceptional tree requirement located anywhere on the lot. The FHNA requested that large-sized "Exceptional" trees located anywhere on a site be retained unless the applicant proves it would deny all reasonable economic use of the property.

Under current regulations, "High Retention Value" (HRV) trees of unlimited size (over 6" diameter at breast height (DBH)) located in setbacks and landscape areas are retained "to the maximum extent possible." Staff also has the authority to require site plan alterations such as building footprint, driveway, easement and utility location modifications to retain High Retention Value trees. Creating a new definition for "Exceptional Trees" and adding a higher level of protection to trees located anywhere on a property could eliminate substantial development potential from a site. This exposes the City to legal risks beyond acceptable levels for legal takings challenges and is not supported by the City Attorney's Office.

Although "Exceptional Tree" protection by FHNA standards is not recommended or included in the draft amendments, staff has included in the proposed code amendments that High Retention Value trees in the HPO shall be retained and that incentives and variations shall be used to retain all HRV trees. As a basic code requirement, an applicant would be required to go through a variance process to remove any HRV tree(s).

- *Prohibit removal of trees in public right of way.* The FHNA requested that the City prohibit removal of trees located in the public right of way that would be affected by development. Staff disagrees and believes the request is not feasible. Because of the fixed location for easements, utilities or access drives, it is often necessary to remove trees with development and with public capital improvement projects. Currently, City staff work with developers to look for opportunities to relocate utilities or access driveways to protect viable trees. In addition, the City has the ability to modify standards to save right of way trees.
- *Impose a fee on development activities to retain more code enforcement officers.* Staff addressed the enforcement concerns by incorporating into the amendments strong code language, recommendation of increased fines (KMC amendments) and clarification of the City's authority to suspend or revoke business licenses for repeat code offenders. Staff met with Public Works and Building Division inspectors to emphasize enforcement of tree protection fencing requirements during construction. FHNA requested and the Planning Commission supports increased code enforcement staffing and inspections on development projects, which is beyond current staffing levels (see Planning Commission recommendation section, below).

#### *April 26, 2018 Public Hearing*

The Planning Commission conducted a public hearing on the draft code amendments on April 26, 2018. The [April 26, 2018 meeting packet](#) provides more detailed background information on the process leading up to the draft code amendments, including regulatory changes that have been made to improve the existing HPO regulations since annexation, the moratorium that was passed prohibiting phased review of tree retention plans and permanent requirements for Integrated Development Plans (IDP) adopted by City Council in November 2017. IDPs are now required for short plats and subdivisions; applicants for these types of projects are required to submit consolidated

site plans showing utilities, tree retention, PNA locations, , grading and building placement. The goal was to design sites for tree retention upfront, rather than let tree removal result from each development phase.

The Planning Commission continued the April 26 hearing to the [May 24, 2018 meeting](#) to allow for written public comments to be submitted, requested additional information of staff, and requested that staff meet with the FHNA to respond to additional questions they had about the draft amendments.

*May 7, 2018 Follow up Meeting with FHNA.* On May 7, 2018, staff met with the FHNA to discuss many of the same changes they requested previously but were not supported by staff such as regulating exceptional trees anywhere on lots, requiring a tree canopy system instead of tree density credits system, and requiring a minimum 30% tree canopy per lot.

*May 24, 2018 Planning Commission Meeting and Deliberation.* The May 24, 2018 Planning Commission packet goes into more detail about revisions that were made since the April 26, 2018 meeting based on staff's meeting with the FHNA and why staff does not recommend approval of all of FHNA requests. The FHNA submitted another letter on May 22, 2018 requesting that additional revisions be made (see Attachment 4). Staff responded by making a few revisions that codify procedural or form changes that staff was planning on making after adoption (see yellow highlighted amendments in Attachment 1 of the May 24, 2018 Planning Commission packet), including:

- Section 70.15.2 was modified to require the tree notification form to be revised for the HPO area to show not only the trees to be removed and retained, but where the replacement trees will be planted and that they must be planted within 6 months;
- Section 70.15.7 was modified to specify that the tree protective fence posts must be driven into the ground to make it more difficult to move the fence during construction; This requirement will also be considered to apply with the city wide KZC Chapter 95 amendment project as well.
- Developers must notify the City of the scheduled dates for grading activity so the inspector can inspect the tree protective fencing; and
- Also included was revised text requested by the Planning Commission to provide an equitable option for tree removal not associated with development in the non-PNA areas (Section 70.15.2) based on the size of property.

Other suggestions requested in the May 22, 2018 FHNA letter staff either does not support, or believes existing regulations or the proposed amendments cover their concerns. These suggestions include:

- As noted above, staff does not support a requirement that a minimum 30% canopy cover be retained on development sites in addition to tree density credit and PNA requirements. Instead, the proposed amendments require retention of all High Retention Value Trees, required tree credits are being increased from 30

to 50 credits per acre and the deviations from development standards section is strengthened to save more trees.

- Adding text related to requirements for a tree retention plan when critical root zones will be intruded upon. Staff believes that existing requirements for tree retention plans and arborist reports in 95.30.4(5) establish what is required to be included in an arborist report, the methods to determine the limits of disturbance within the critical root zone, off site trees that may be potentially impacted by site disturbance, special instructions for any work within the limits of disturbance, and aftercare. Staff acknowledges the aftercare can be strengthened with the city wide Chapter 95 amendments.
- Additional maintenance requirements for non-PNA replacement trees that were removed without development. Existing regulations require development permit applicants to sign a five year maintenance agreement for retained existing and supplemental trees as a permit condition for a new house or short plat. For tree replacement not associated with development (by home owner request) staff thought it prudent to avoid having to require a permit that in turn would require an inspection. Maintenance of replacement trees would be on the honor system.

### **Planning Commission Recommendation**

In conclusion, the enclosed draft amendments were revised to include feedback from extensive meetings with the FHNA to respond to their concerns (see Issues Chart in April 26<sup>th</sup> meeting packet and FHNA letters in Attachment 4), including changes that staff could support, based on direction from Planning Commission at the April 26 and May 24 meetings. At the May 24 meeting, the Commission made a motion to recommend approval of the enclosed amendments to City Council.

The Commission also includes in its recommendation that City Council should investigate ways to use new and existing regulations, and provide new dedicated resources to undertake aggressive enforcement of tree code violations. They did not give specifics and wanted to leave it up to the Council to determine the best approach. The HPO regulations currently require longer staff permit review time and additional inspections than elsewhere in the city. Additional resources could include increased permit fees within the HPO or hiring additional inspection staff. However, staff cautions that additional inspections would not substantially reduce tree code violations because such violations would likely happen when inspections do not occur (e.g., late evening or early morning hours or on days when there are no inspections scheduled).

### **Summary of Proposed Code Amendments Recommended by Planning Commission**

The following section is a summary of the draft code amendments to KZC 70 and 95 included in Attachments 1, 2 and 3.

KZC Chapter 70, Holmes Point Overlay regulations (Attachment 1)

- Overall, the format of the chapter was reorganized into two key sections: 1) tree removal where no development is involved, and 2) tree retention associated with development activity to make it easier for the reader to understand minimum tree and vegetation requirements within the Protected Natural Areas (PNAs), a minimum of 25% of a lot. Text changes clarify that all site disturbance is limited to the remaining 75% of each lot and that up to 50% of the non-PNA area may be used for lawn, landscaping or garden. Inspection and maintenance requirements have been clarified.

Due to the volume and extent of edits and reorganized sections, readers may find it easier to compare Attachment 2 (clean copy – no track changes) to the [existing KZC Chapter 70](#).

- Section 70.05, the Purpose and Intent section was edited to be consistent with the intent of the regulations and adopted policies in the Neighborhood Plan, and to identify the 60% tree canopy goal for the HPO stated in the Plan.
- Section 70.15, Tree Removal - Not Associated with Development Activity: New text was added to describe standards for tree removal requests within a PNA and outside a PNA.
  - Tree Removal within a PNA: No changes were made to the current requirements for tree removal within a PNA. Tree removal is only permitted if the tree is shown to be a hazard or nuisance. A tree permit application, fee, arborist report and tree replacement with a native tree species is still required.
  - Tree Removal within Non-PNA Portion of property would be allowed on a limited basis: During the neighborhood planning process and early discussions about the HPO code amendments, property owners expressed a desire to align tree removal rules outside of PNAs with those in the rest of the City. Generally, throughout Kirkland, up to two trees may be removed during a twelve-month period (with some exceptions) without a permit. Current HPO regulations only allow removal of nuisance or hazard trees.

Staff and the FHNA agreed on an option that would allow up to two trees to be removed outside the PNA portion of the lot every five years, without a permit (but requiring a notification to be submitted to the City for tracking purposes). No fee would be charged and no arborist report would be required. For each tree removed, one replacement tree would be required to be planted.

The FHNA originally wanted to limit tree removal to a maximum of two trees every 10 years, but a 5-year time frame was arrived at as a reasonable

compromise between the two competing objectives of slowing canopy loss and allowing property owners reasonable maintenance of their property.

FHNA also requested to limit tree removal if it reduces canopy cover on the lot below 30%. Staff does not support this last standard because it would unfairly penalize a significant number of property owners with low tree canopy cover under existing conditions, and because tree canopy cover is not a metric currently in use for code requirements. Staff believes that it would be overly burdensome on property owners and City staff to attempt to measure or enforce minimum canopy cover on sites not subject to major development activities.

Staff received comments on the draft text from property owners with larger lots requesting that they be able to remove more trees and not plant replacement trees if the amount of existing remaining trees met minimum standards (see Alice Blanchard's letter in Attachment 4). Planning Commission asked staff to explore alternative text that addressed Ms. Blanchard's concerns and provided more equitable options based on lot size. At the May 24, 2018 meeting, the Planning Commission agreed to allow the number of trees to be removed to correlate with lot size as described in Attachment 1 in Section 70.15.2 with the clarification to cap the removal to four trees if lots are larger than a ½ acre or if removal of more than four trees is proposed on larger than one acre the owner would need to apply for a Forest Management Plan.

- Section 70.20 Tree Retention Associated with Development Activity: The format of this section was reorganized to describe the regulations associated with development activity within the PNA and non-PNA area of properties. The same proportions of what is allowed to occur within the 75% (non-PNA), 25% (PNA) and 50% (garden/lawn/landscape area) of the lot have not changed. The inspection requirements for PNAs were clarified to describe inspections required prior to permit approval, prior to site disturbance, and prior to final inspection. New final inspection requirements were added to ensure that tree retention and planting occurs per the approved plan.
- The minimum standards for PNAs were revised to clarify what is expected for optimal size, location, incentives and variations, minimum vegetation, trees, and soil specifications.
- The threshold for requiring PNAs for single family additions and remodels was changed to when the total square footage of the proposed improvements exceeds 50% of the existing structure square footage. The previous threshold was based on the cost of an addition (which is not as closely related to impacts or land disturbance as the actual footprint of the addition).

- Consolidation or clustering of PNAs with short plats, subdivisions and land surface modification permits for more than one lot would be allowed in order to retain a superior, larger grove of trees, more effectively aligning with the intent of the HPO zone. Existing regulations requiring that 25% of each lot be dedicated as a PNA often results in smaller, isolated, and often lower quality PNAs.
- (New) Testamentary plats and land surface modification permits: In response to a FHNA concern that testamentary plats are being approved that were not required to go through an IDP review process, a new requirement ensures PNA designation with land surface modifications of more than one lot. In short, testamentary plats allow property division at death for the benefit of heirs that could otherwise not be done during life. Testamentary plats are allowed as one of the exemptions from the State's provisions for subdivisions governed by RCW 58.17.040. They side-step the City's typical short plat or subdivision review process. Testamentary plats only require a land surface modification permit to install the utilities, access improvements and building permits.
- (New) Larger consolidated PNAs would be required to be in a tract. A larger PNA would require signage indicating its location and possibly require the applicant to post a bond (or other security) to ensure the long-term maintenance of the PNA. Currently, PNAs can be in an easement or tract.
- (New) All High Retention Value (HRV) Trees are required to be retained in non-PNA portions of the property (HRV tree is a [defined term in KZC 95](#) (a healthy viable tree in required setback yards, specimen trees, tree groves, trees on slopes at least 10 percent). This is more restrictive than the current requirement to "retain where feasible" or "to the maximum extent possible." A property owner would need to exhaust all variations and incentives allowed by the code in KZC 95.32 to retain trees. If they are not able to retain HRV trees, the only mechanism for relief from the requirement would be to apply for a variance review process (KZC 120). The draft code includes an exception for public infrastructure projects constructed by a public agency.
- (New) Increased tree density credits from 30 to 50 credits per acre in the non-PNA portion of the lot would be required in response to FHNA's request for increased tree retention and replanting requirements to ensure the tree canopy goal will be achieved. As an example, an average 10,890 sq. ft. lot in the RSA 4 zone, would change from:

*Current 30 credits per acre requirement, which equates to 5.64 credits:  
Retain one 18-inch and one 6-inch DBH tree, or plant six 2-inch caliper trees,  
to:*

*New requirement of 50 credits per acre, which equates to 9.21 credits:  
Retain one 16-inch and one 22-inch DBH tree or plant nine 2-inch caliper  
trees.*

However, it should be noted that the higher tree credit requirement possibly conflicts with property owner desires to avoid tree-covered structures, may further limit garden and lawn areas and view corridors, and may reduce sun exposure on solar panels.

- (New) Landscape plans prepared by a licensed landscape architect, showing existing and supplemental trees meeting the tree density requirements. The landscape architect would be required to show that the trees will grow to achieve a 50% canopy in the non-PNA area and 100% canopy in the PNA area in twenty years' time.
- (New) Licensed landscape architects must submit written verification following their final inspection to ensure the tree size, species and locations shown on the approved landscape plan have been installed as approved.

The previous two new requirements are in response to FHNA's concern about whether the increased tree density planting requirements and other code amendments will maintain the HPO's 60% tree canopy cover. It should be acknowledged that both of the above requirements will impose an additional cost to applicants for preparation of the landscape plan, inspection time and verification of final inspection findings.

*KZC Chapter 95 Tree Management and Required Landscaping changes  
applicable in HPO zone (Attachment 2)*

- (New) Section 95.10 Definitions: A new definition of Inner Critical Root Zone (ICRZ) was added, applicable only in the HPO zone. No encroachment would be permitted in the ICRZ unless diagnostic testing indicates the tree will survive the encroachment. This was added in response to FHNA concerns to improve tree protection and tree retention during construction and minimize impacts to trees on adjacent properties.
- Section 95.23 Tree Removal - Not Associated with Development Activity: Added text to cross-reference KZC 70, stating properties within the HPO area are subject to additional tree removal and replacement standards.
- Section 95.30 Tree Retention Associated with Development Activity: Added text that properties within the HPO area are subject to additional tree retention and protection regulations in KZC 70, including tree removal allowances, development

review processes, PNA designation and use of incentives and variations to standards to retain High Retention Value trees.

- (New) Tree Retention Plan chart: In Subsection 95.30.5, additional HPO requirements were developed for single family, short plat, subdivision and land surface modification developments:
  - The Inner Critical Root Zone of trees must be identified.
  - Potential impacts to trees on neighboring properties are subject to notification and authorization requirements.
  - All High Retention Value Trees must be retained.
  - Potential encroachments to an offsite tree's Interior Critical Root Zone would require adjacent property owner notification and written authorization to the intrusion.
- Section 95.32 Revised Incentives and Variations to Development Standards: Added new text for review of IDPs with short plats, subdivisions and land surface modification applications (for more than one lot) that allow consolidation of larger PNAs in tracts. Consolidation of the PNAs may result in smaller lot sizes, which in turn could result in reduced home sizes (Floor Area Ratio) and lot coverage restrictions. In order not to penalize the property owner for consolidating a PNA, the Planning Director would be authorized to increase lot coverage and floor area ratio requirements proportionate to the reduction in lot size resulting from the consolidated PNA.
- Tree Density Requirement: Adds text limiting or capping the tree density credits awarded to larger trees in the HPO with the purpose of increasing the number of trees retained (i.e., eliminating the incentive to preserve one or two large-diameter trees in order to meet the tree credit requirement).
- Tree and Landscape Maintenance Requirements: Revised tree and vegetation maintenance requirements in the HPO to reflect new tree removal allowances outside the PNA.

KZC Chapter 10.30 (Attachment 3)

Attachment 3 is a minor amendment to Section 10.30 that changes the name of the HP to HPO, consistent with what is now on the Zoning Map legend.

*Implications of Code Amendments*

Page 9 of the [May 24, 2018 Planning Commission packet](#) compares the new or enhanced amendments to existing regulations and indicates whether the changes will result in additional staff time to administer or add an additional cost to the property owner or permit applicant.

#### Procedural Changes If Code Amendments Are Adopted

In addition to code amendments, administrative procedural changes have been made or are in the process of being implemented.

- These include procedures related to tree protection inspections and enforcement activities during construction, updated pre-construction handouts to require acknowledgement of tree retention conditions and requirements, and new tree protection signage standards. Staff from Northshore Utility District are now invited to pre-submittal meetings to discuss utility location and plat layout to maximize tree retention. A Voluntary Conservation Easement template is available for homeowners who want to protect trees on their property in perpetuity.
- Staff has also met with development review and inspection staff to emphasize the FHNA's concerns.

#### Amendments to Kirkland Municipal Code Titles 1.12. & 7.02

Under a separate City Council agenda item on June 19, 2018 amendments to the Kirkland Municipal Code are recommended to strengthen code enforcement of tree regulations including:

- Increased civil penalty fines for illegal tree removal or damage relevant to tree size. For example, rather than the previous \$1,000 fine per tree, civil penalty fines would now range from \$1,000 for a 6-8 inch DBH tree to \$20,000 for a tree over 28 inches DBH.
- Address situations where a tree has been illegally removed with attempts to conceal the evidence; the proposed amendments add a \$10,000 civil penalty fine in those situations.
- Authority to assess treble damages for illegal public tree removal or damage per RCW 64.12.030.
- Clarify the definition and fines for "repeat violations".
- Clarify tree/site restoration requirements based on size using tree density credits (trunk diameter, or DBH) multiplied by an industry standard unit cost for replacement.
- Suspend or revoke business licenses for repeat offenders.

#### Public Outreach

In addition to the standard notice for the public hearing, the following public outreach techniques were used to inform the public throughout the code amendment process:

- Email announcements to the Finn Hill Neighborhood Plan list serve and people who submitted comments throughout the process, including those related to the HPO
- HPO Amendments project webpage updates
- Email announcements to the HPO list serve
- Direct notification to the Kirkland Developers Partnership
- Direct notification to the Master Builders Association
- Direct notification to the Kirkland Chamber of Commerce

### Public Comments

Throughout the neighborhood plan and code amendment process, staff received a high level of public input from residents, property owners and the development community on both sides of the tree protection spectrum; this input continued through the Planning Commission study sessions and public hearing.

Attachment 4 contains recent correspondence about the proposed code amendments, including public comment letters, emails and oral comments received by the Planning Commission prior to and at the April 26, public hearing, including a letter from the Master Builders Association. The Commission allowed written comments to be submitted until the May 24, 2018 meeting. Public comment emails and letters related to the HPO zone received as part of the Finn Hill Neighborhood Plan were also reviewed. In addition, the FHNA solicited comments independently through their association network.

### Staff Conclusions

As discussed in the April 26, 2018 and May 24, 2018 Planning Commission packets, since annexation, the City has taken a number of steps to meet the intent and significantly improve the HPO regulations. Data from Kirkland's last tree canopy analysis suggests the tree density credit system is effective in increasing tree canopy, particularly in comparison to other cities. Rezones lowering the allowable density were adopted and IDP requirements imposed to promote enhanced tree retention. Staff will revisit the tree canopy vs. tree credit methodology when the tree canopy analysis is to be completed later this year.

Staff has made every effort to respond to the various comments submitted by the FHNA group and other property owners received to-date. The amendments will require retention of High Retention Value trees, increase the minimum tree density requirement outside the PNA areas to require planting more trees, impose more stringent enforcement of tree retention requirements, and allow consolidation of PNAs to allow for superior tree retention. At the same time, the amendments will allow more flexibility for home owners to remove trees for tree maintenance purposes.

Combined with the amendments, the City is proposing a menu of actions including incentives, changes to procedures, and increased code enforcement for tree protection, along with future community education and outreach to encourage tree retention in the HPO zone.

### **Next Steps**

A tentative date for City Council adoption is the July 3, 2018 meeting.

Staff has started a more comprehensive city wide update of the tree regulations in Chapter 95, at which time any needed adjustments to the chapter's HPO-related amendments could be implemented. The City is conducting a tree canopy analysis in 2018 to update the 2010 tree canopy data, which may inform any changes to tree retention and replanting requirements. In addition, a task for future work program years is to increase public education and outreach regarding the City's tree regulations.

Memo to City Manager  
HPO-related Zoning  
Code Amendments  
June 19, 2018

**Attachments:**

1. Holmes Point Overlay KZC Chapter 70 amendments
2. KZC Chapter 95 tree regulations amendments
3. KZC Chapter 10.30 amendment
4. Public comments received

cc: File Number CAM18-00080

**KZC Chapter 70 – [DRAFT CLEAN COPY] HOLMES POINT OVERLAY ZONE AMENDMENTS 4/19/18- includes PC amendments from 5-24-2018**

**Sections:**

- 70.05 Purpose and Intent
- 70.10 Applicability
- 70.15 Tree Removal – Not Associated with Development Activity
- 70.20 Tree Retention Associated with Development Activity

**70.05 Purpose and Intent**

The purpose of the Holmes Point Overlay (HPO) development standards is to allow infill at urban densities while providing an increased level of environmental protection for the Holmes Point area, an urban residential area characterized by a predominance of critical areas, fewer roads and other impervious surfaces, dense tree and vegetation cover and wildlife habitat. To further the Finn Hill Neighborhood Plan policies, the standards in this Chapter limit allowable site disturbance; reduce visual impacts of development; maintain community character; protect native trees, vegetation and soils; reduce surface water runoff; protect wildlife habitat; slow the loss of tree canopy resulting from tree removal, and establish requirements to maintain a 60 percent tree canopy goal in the HPO.

(Ord. 4437 § 1, 2014; Ord. 4196 § 1, 2009)

**70.10 Applicability**

This Chapter applies to properties within the HPO Zone on the Kirkland Zoning Map. These regulations add to and in some cases supersede the other regulations of this code, including but not limited to regulations in KZC Chapters 15 (Low Density Residential Zones), 95 (Tree Management and Required Landscaping) and KMC Title 22 (Subdivisions).

Terms and requirements not defined in this section shall be defined as set forth in Chapter 95 KZC

**70.15 Tree Removal – Not Associated with Development Activity**

Tree removal in the HPO that is not associated with development activity is subject to all standards for tree removal, replacements and tree removal permits as described in Chapter 95.23 KZC, subsections (5)(b) through (d) and the following standards:

1. Permit Required – Protected Natural Area (PNA). No trees shall be removed from a designated PNA unless they are hazard or nuisance trees, or are approved for removal as part of a Forest Management Plan. Any tree removal in a PNA shall be authorized through a tree removal permit as provided in this chapter, unless the activity is exempted in KZC 95.20. Permit application, procedures and appeal requirements shall be in accordance to KZC 95.23.2-4. For every significant tree that is removed from a PNA, the applicant shall plant a native tree species of the same deciduous or coniferous type as the removed tree. Replacement trees shall meet the standards of subsection 70.20.1(f) 2.
2. Tree Removal Allowances – Non-PNA Areas. A property owner of developed property may remove significant trees from their property in accordance with the criteria in a. through f. below, provided that the owner submits a tree notification request form to the City and that the request is approved by the Planning Official. The notification request form shall include the location of the tree(s) to be removed and replanted, and affirm that the tree removal meets the following criteria:
  - a. There is no active application for development activity for the site; and
  - b. The trees to be removed were not required to be retained or planted as a condition of previous development activity; and
  - c. For every significant tree that is removed, the planting of one replacement tree is shown on the tree notification form. The replacement tree(s) are required to be planted within 6 months. Conifer species are the preferred replacement trees in Non-PNA areas in the HPO. Replacement trees shall meet the standards of subsection 70.20.1(f) 2.; and
  - 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.

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

The following standards shall be applied to all residential development:

#### **1. Protected Natural Area (PNA) Designation.**

- a. **Applicability** - The requirement for designating and restoring a PNA with vegetation set forth in subsection (4)(a) and (b) applies to:
  - 1) New development or redevelopment, 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.
  - 2) Short Plats and Subdivisions.
  - 3) Land Surface Modification (LSM) permits associated with the development of more than one lot.
- b. **Size** - At least 25 percent of the total lot area shall be designated as a Protected Natural Area (PNA), in a location and configuration that requires the least alteration of existing native soil, native understory, vegetation and trees.
- c. **Location** – PNA designation, including subdivisions, short subdivisions and Land Surface Modifications associated with the development of more than one lot shall be consolidated in one larger contiguous area on the subject property unless the City determines that designation of more than one area results in superior protection of existing trees and vegetation. The PNA shall be designated to encompass any critical areas on the lot and, to the maximum extent possible, consist of existing viable trees and native vegetation of varying size, age and species that meet the minimum vegetation condition standards set forth in subsection (1)(e) of this section.
- d. **Incentives and Variations to Development Standards** - Applicants shall pursue Incentives and Variations to Development Standards per Chapter 95.32 KZC to facilitate consolidation of PNAs.
- e. **Minimum Tree and Vegetation Conditions in the PNA** - Priority is given to designate contiguous areas containing native vegetation meeting the following standards:
  - 1) **Trees** – Viable trees at a tree density of 150 tree credits per acre within the PNA, calculated as described in KZC 95.33.  
  
Example: A 10,000-square-foot lot requires a 2,500 sq. ft. PNA (10,000 x 25% = 2,500 sq. ft.). Within the 2,500 sq. ft. PNA, nine (9) tree credits are required (2,500 sq. ft./43,560 sq. ft. = 0.057 acres x 150 tree credits = 8.6, rounded up to nine (9) tree credits). Note: the tree density for the remaining lot area is 50 tree credits per acre.
  - 2) **Shrubs** – Predominately 36 inches high, covering at least 60 percent of the PNA.
  - 3) **Living Groundcovers** – Covering at least 60 percent of the PNA.
- f. **Minimum Supplemental Tree and Vegetation Standards** - If the subject property contains insufficient existing vegetation pursuant to subsection (4)(e) of this section, or if the Planning Official determines it is not feasible to retain an existing vegetation area, a PNA shall be restored or established in a location approved by the Planning Official. The applicant shall provide a landscape plan per subsection 70.20.6(b) showing at a minimum:
  - 1) **Native Plants** - Trees, shrubs and groundcovers selected from the Kirkland Native Plant List, or other native species approved by the Planning Official shall be used to supplement vegetation in the PNA.

- 2) Trees –The minimum size for a supplemental tree worth one tree credit in the PNA shall be at least six (6) feet in height for a conifer and at least two inches in caliper (DBH) for deciduous or broad-leaf evergreen trees, measured from existing grade. Native conifer tree species are preferred over deciduous trees in the PNA
  - 3) Shrubs – Planted to attain coverage of at least 80 percent of the area within two years, and at the time of planting be between 2- and 5-gallon pots or balled and burlapped equivalents.
  - 4) Living Groundcovers – Planted from either 4-inch pot with 12-inch spacing or 1-gallon pot with 18-inch spacing to cover within two years 80 percent of the naturalized area.
  - 5) Soil Specifications – Soils in supplemental vegetation areas shall be amended to comply with soil amendment standards in the City of Kirkland Public Works Pre-Approved Plans and Policies.
  - 6) Mulch – Mulch in supplemental vegetation areas shall comply with KZC 95.50.
  - 7) Prohibited Plants – Invasive weeds, noxious plants and trees listed on the Kirkland Prohibited Plant List shall be removed within the PNA in a manner that will not harm trees and vegetation that are to be retained.
2. Non-PNA Portion of Property. Total site alteration, including impervious surfaces and other alterations, shall not exceed 75 percent of the total lot area. In addition to the PNA and the area allowed for buildings and other impervious surfaces under section (4), up to 50 percent of the total lot area may be used for garden, lawn or landscaping, provided:
- a. All High Retention Value Trees, as defined in Chapter 95 KZC shall be retained. Supplemental and existing viable trees combined at a minimum tree density of 50 tree credits per acre are required in the Non-PNA portion of property, calculated as described in KZC 95.33. Example: A 10,000-square-foot lot requires a 2,500 sq. ft. PNA ( $10,000 \times 25\% = 2,500$  sq. ft.), leaving a 7,500-square-foot Non-PNA area. Within the Non-PNA, nine (9) tree credits are required ( $7,500$  sq. ft./ $43,560$  sq. ft. =  $0.172$  acres)  $\times$  50 tree credits = 8.6, rounded to nine (9) tree credits.  
  
The area limits set forth in this subsection are to be measured at grade level; the area of allowable garden, lawn or landscaping may intrude into the drip line of a significant tree required to be retained under this subsection if it is demonstrated not to cause root damage or otherwise imperil the tree’s health; and
  - b. If development on the lot is to be served by an on-site sewage disposal system, any areas required by the Department of Public Health to be set aside for on-site sewage disposal systems shall be contained as much as possible within the portion of the lot altered for garden, lawn or landscaping as provided by this subsection. If elements of the on-site sewage disposal system must be installed outside the landscaped area, the elements must be installed so as not to damage any significant trees required to be retained under subsection (3)(a) of this section, and any plants that are damaged must be replaced with similar native plants.
  - c. Soils on all proposed projects that are subject to clearing and grading that have not been covered by impervious surface, incorporated into a drainage facility or engineered as structural fill or slope shall, at project completion, meet soil amendment requirements per Pre-Approved Plan CK-E.12 within the clearing limits, i.e. in all disturbed areas. In the HPO, this will include all areas where alteration of soil characteristics has occurred.
3. Critical Areas, Surface Water Development Review. When review under Chapter 85 KZC (Critical Areas: Geologically Hazardous Areas) or Chapter 90 KZC (Critical Areas: Wetlands, Streams, Minor Lakes, Fish and Wildlife Habitat Conservation Areas and Frequently Flooded Areas) or the City of Kirkland’s Surface Water Design Manual is required, the review shall assume the maximum development permitted by this Chapter will occur on the subject property, and the threshold of approval shall require a demonstration of no significant adverse impact on properties located downhill or downstream from the proposed development.
4. Maximum Lot Coverage. Total lot coverage shall be limited within every building lot as follows:
- a. On lots up to 6,500 square feet in size, 2,600 square feet;
  - b. On lots 6,501 to 9,000 square feet in size, 2,600 square feet plus 28 percent of the lot area over 6,500 square feet;
  - c. On lots over 9,000 square feet in size, 3,300 square feet plus 10 percent of the lot area over 9,000 square feet;

- d. On a lot already developed, cleared or otherwise altered up to or in excess of the limits set forth above prior to July 6, 1999, new impervious surfaces shall be limited to five (5) percent of the area of the lot, not to exceed 750 square feet; and
- e. For purposes of computing the allowable lot coverage within each lot, private streets, joint-use driveways or other impervious-surfaced access facilities required for vehicular access to a lot in easements or within flag lots shall be excluded from calculations.

**Maximum Lot Coverage Summary Table:**

<b>Lot Size</b>	<b>Maximum Lot Coverage</b>
Less than 6,500 sq. ft.	2,600 sq. ft.
6,501 sq. ft. to 9,000 sq. ft.	2,600 sq. ft. plus 28% of the lot area over 6,500 sq. ft.
9,001 sq. ft. or greater	3,300 sq. ft. plus 10% of the lot area over 9,000 sq. ft.
Developed, cleared or altered lots	New impervious limited to 5% of the total lot area, but not to exceed 750 sq. ft.

- f. For development activity occurring after July 6, 1999, upon written request from the applicant, the Planning Director may allow up to a 10 percent increase in impervious surface on individual lots over the limits set forth above, provided such increase is the minimum necessary to allow reasonable use of the property and meets all other applicable decision criteria for a variance as provided in Chapter 120 KZC, and one or more of the following circumstances applies:
  - 1) Development of a lot will require a driveway 60 feet or longer from the lot boundary to the proposed dwelling unit;
  - 2) On-site flow control facilities are required by the Public Works Department;
  - 3) The requested increase will allow placement of new development on the site in such a way as to allow preservation of one or more additional significant trees, as defined in Chapter 95 KZC, that would otherwise be cleared; or
  - 4) The requested increase is necessary to provide additional parking, access ramp or other facilities needed to make a dwelling accessible for a mobility-impaired resident.

(Ord. 4437 § 1, 2014; Ord. 4196 § 1, 2009)

- 5. Subdivisions, Short Subdivisions and Land Surface Modifications. Subdivisions, short subdivisions, and land surface modification permits associated with the development of more than one lot shall be subject to the following requirements:
  - a. Applications shall include a comprehensive review of Tree Retention Plan as outlined in KZC 95.30, including the location of the required PNA. Phased review of Tree Retention Plans as described in KZC 95.30(6)(a) is not permitted within the HPO zone;
  - b. The applicant may propose or the City may require alterations to the proposed subdivision, short subdivision, or LSM in order to ensure the best tree retention and location for the PNA. Such alterations include 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 per Chapter 95.32;
  - c. New public or private road improvements shall be the minimum necessary to serve the development on the site in accordance with Chapter 110 KZC. The City shall consider granting modifications to the road standards to further minimize tree removal, site disturbance, and consistent with pedestrian and traffic safety considerations, and the other purposes of the road standards;

- d. Impervious surfaces and other alterations within each lot shall be limited as provided in subsections (2), (3) and (4) of this Section;
  - e. For larger PNAs, the City may require permanent signage to be installed along the perimeter of the PNA designating the area as a PNA prior to recording. Signage shall meet the administrative standards of the Planning and Building Department in regard to design, number and location. The signs must be maintained and remain in perpetuity; and
  - f. The proposed PNA shall generally be established within a separate tract. The approved PNA shall be shown on the face of the plat prior to recording and designate who is responsible for maintaining the PNA.
6. Tree Retention and Landscape Plan Required.
- a. The applicant shall submit a Tree Retention Plan required under KZC 95.30. In addition, it shall include the existing conditions and general locations of all shrubs and groundcover on the subject property.
  - b. In addition to the Tree Retention Plan required pursuant to KZC 95.30, permit application materials shall include a landscape plan prepared by a landscape architect licensed in Washington State that clearly depicts the quantity, location, species, and size of existing and supplemental plant materials and trees proposed to comply with the tree density and vegetation requirements of this section for the PNA and Non-PNA portions of the subject property. The landscape architect shall indicate on the plan that based on the size, quantity, spacing and species of the existing and supplemental trees, a minimum 50% tree canopy cover in the Non-PNA area and 100% tree canopy cover in the PNA area portions of the lot will be achieved in twenty years' time. Plants installed in the PNA shall be integrated with existing native vegetation and planted in a naturalistic pattern per the standards in Chapter 83.400 KZC. The landscape plan shall be reviewed by the Planning Official for approval.
7. Site Inspections. The Planning and Building Department shall conduct site inspections prior to approving any site alteration or development activity as follows:
- a. Prior to altering the site, the applicant shall clearly delineate the proposed PNA and the area of the lot proposed to be altered and built on with 4-foot high stakes and high-visibility tape or other conspicuous and durable means, and shall depict this area on all site plans included in the permit application;
  - b. Prior to approving any short subdivision, subdivision, building or land surface modification permit on any parcel, the Planning Official shall inspect the subject property to verify the existing conditions, tree and vegetation cover, and any previous site alteration or building on the site;
  - c. Prior to permit issuance, the applicant shall install tree and soil protective fencing per KZC 95.34, subject to Planning Official inspection. In addition to requirements of KZC 95.34, the protective fence posts shall be driven into the ground, remain in the approved location for the duration of development activities, including required soil amendments and include signage per Public Works Pre-Approved Plans for Tree Protection Fence Standards; and
  - d. Prior to any development activity related to a land surface modification permit the applicant shall notify the City of the scheduled dates for such activity; and
  - e. Prior to Planning Official final inspection of any land surface modification or building permit, or recording of any short plat or subdivision, a landscape architect licensed by the State of Washington shall inspect the landscaping and submit an as-built plan and photo documentation verifying to the Planning Official that all vegetation required to be planted or preserved as indicated on the approved landscape plan was installed.
8. Tree and Landscape Maintenance Requirements
- In general, forested hydrological conditions, soil stability and the duff layer shall be maintained on properties in the HPO as follows:
- a. Protected Natural Area(s) – PNA(s) shall be retained in perpetuity.
    - 1) For subdivisions, short subdivisions and LSMs associated with more than one lot, PNAs shall be set aside in a tract. In other developments, a recorded protected easement is required. The approved PNA shall be shown in a form approved by the City Attorney or other legal document recorded with and on the face of the plat with a designation

of who is responsible for maintaining the PNA. Land survey information shall be provided for this purpose in a format approved by the Planning Official.

- 2) The applicant, landowner, or successors in interest shall be responsible for the ongoing maintenance of vegetation required under Section 70.20 of this Chapter and KZC 95. For short plats and subdivisions containing larger consolidated PNAs where extensive supplemental planting is required, the City may require a financial security under Chapter 175 KZC to ensure compliance with the monitoring and maintenance of trees and vegetation planted in the PNA.
  - 3) Plants that die must be replaced in kind or with similar plants contained on the Native Plant List, or other native species approved by the Planning Official.
  - 4) Construction of primitive pedestrian-only trails may occur if they can be designed with minimal environmental impact. In no case shall trails be constructed of concrete, asphalt, or other impervious surfaces.
- b. Non-PNA Portions of the lot which are not geologically hazardous areas or do not contain wetlands, streams, minor lakes, fish and wildlife habitat conservation areas and frequently flooded areas, or critical areas governed by Chapter 85 or 90 KZC, shall be maintained per Chapter 70.15.2 KZC.
9. Conformance with Other Provisions. Conformance with this Chapter shall not relieve an applicant from conforming to any other applicable provisions of the Zoning Code, Subdivision Ordinance, or Shoreline Master Program.  
(Ord. 4619 § 1, 2017; Ord. 4551 § 4, 2017; Ord. 4491 §§ 3, 11, 2015; Ord. 4437 § 1, 2014; Ord. 4196 § 1, 2009)

**KZC Chapter 95 – [DRAFT CODE AMENDMENTS WITH MARKUPS] TREE MANAGEMENT AND  
REQUIRED LANDSCAPING 4/13/18 – [Revised 5-25-2018 per PC direction](#)**

**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.

x. Inner Critical Root Zone (ICRZ) – An area encircling a tree that is half the distance of the Critical Root Zone, or the inner half of the Critical Root Zone radius. Applicable only in the HPO only.
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)

### **95.23 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.  
[\(x\) Holmes Point Overlay zone. Properties located within the Holmes Point Overlay area are subject to additional tree removal and replacement standards. See Chapter 70 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) 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)

### **95.30 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, [including tree removal allowances, development review requirements, Protected Natural Area designation, soil amendment requirements and the use of Incentives and Variations to development standards to retain High Retention Value trees.](#)

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). For properties located in the HPO, Critical Root-Zones and Inner Critical Root Zones of significant trees must be shown on the site plan. If any disturbance is proposed within the Critical Root Zone of significant trees on a neighboring property, the applicant shall provide evidence that the owner of said tree(s) has been notified in writing of the potential impact. If any disturbance is proposed within the Inner Critical Root Zone of significant trees on a neighboring property, the applicant shall provide written authorization from the property owner of the impacted tree(s) for the encroachment. The Planning Official may waive this requirement if the applicant can demonstrate, through non-injurious methods such as air root excavations, that there are no roots within the Critical Root Zone;
  - 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. In the HPO, include off-site trees that may be potentially impacted by site disturbances;
  - 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**

<b>Development Activity Required Components</b>	<b>Minor <sup>(1)(3)</sup> – Single-Family, or two attached, detached, or stacked dwelling units, and related demolition and land surface modification applications</b>	<b>Major <sup>(2)(3)</sup> Single-Family, or two attached, detached, or stacked dwelling units, and related demolition and land surface modification applications</b>	<b>Multifamily, Commercial, any other use other than residential, and related demolition and land surface modification applications</b>	<b>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>
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**TREE INVENTORY AS DESCRIBED IN KZC 95.30(4)(a) FOR:**

All significant trees on the subject property		X	X	X
Significant trees potentially impacted by proposed development activity	X			

**SITE PLAN AS DESCRIBED IN KZC 95.30(4)(b) TO INCLUDE:**

Surveyed tree locations if required by the Planning Official		X	X	
Surveyed tree locations				X
A final landscape plan showing retained trees			X	
<a href="#">Indicate Inner Critical Root Zones of significant trees on properties in the HPO per 95.10.xx</a>	<u>X</u>	<u>X</u>		<u>X</u>

**REQUIREMENTS IN KZC 95.30(4)(c) SHALL BE PREPARED BY A QUALIFIED PROFESSIONAL AND APPLY TO:**

Significant trees within required yards or within 10 feet of any side property line		X		
			X	

Significant trees potentially impacted by proposed development activity as determined by the Planning Official				
Proposed removal of trees with a high retention value in required landscaping areas			X	
All significant trees  <a href="#">All significant trees on neighboring properties per 95.30.6(a)3</a>		<u>X</u>		X  <u>X</u>

**TREE RETENTION STANDARDS**

Applicant is encouraged to retain viable trees	X <sup>(4)</sup>			
<a href="#">All High Retention Value trees shall be retained in the HPO.</a>	<u>X<sup>(6)</sup></u>	<u>X<sup>(6)</sup></u>		<u>X<sup>(6)</sup></u>
<a href="#">Notification/authorization for significant trees on neighboring properties in the HPO.</a>	<u>X</u>	<u>X</u>		<u>X</u>
Retain and protect trees with a <u>High Retention Value</u> 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>

**TREE DENSITY**

Tree density requirements shall apply as required in KZC 95.33		X		X
A minimum of two trees must be on the lot following the requirement set forth in KZC 95.33(4)	X			

**LANDSCAPING**

Preserved trees in required landscaping areas shall apply			X	
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toward required landscaping requirements				
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Notes:

- (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) Preservation and maintenance agreements in the Holmes Point Overlay zone apply per KZC 70. Public infrastructure projects constructed by a public agency are exempt from this retention standard, but subject to all other applicable retention standards.

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, tree retention for subdivision or short plat applications and land surface modification applications associated with the development of more than one lot shall provide be determined –a-comprehensive review of Tree Retention Plans through an integrated process 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.

[6. Additional variations in the Holmes Point Overlay zone for short plats, subdivisions, and land surface modification applications associated with the development of more than one lot. The Planning Director may approve variations to maximum Floor Area Ratio and Lot Coverage requirements in order to facilitate consolidation of the PNA within a separate tract pursuant to KZC 70. If the PNA is placed in a tract and the creation of the tract results in lot sizes reduced below 10,890 square feet in the RSA 4 zone or 7,260 square feet in the RSA 6 zone, then the maximum Floor Area Ratio and Lot Coverage requirements may be adjusted proportionate to the lot size reduction\(s\). Variations shall be included in a recorded agreement.](#)

(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.

Protected Natural Areas (PNA) located on properties within the HPO zone are subject to tree density credits set forth in Chapter 70 KZC

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.
- c. [In the HPO, no tree shall receive more than 11 tree credits regardless of DBH.](#)

**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 X 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)

### **95.51 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. [Trees and other](#) vegetation in designated Protected Natural Areas in the Holmes Point Overlay Zone ~~is~~ are to be protected in perpetuity pursuant to KZC 70.20.8(a). Significant trees in the remainder of the lot shall be ~~protected in perpetuity~~ maintained pursuant to KZC 70.20.8(b) [and KZC 95.23](#).
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)

Draft Zoning Code Amendment

**KZC 10.30 Overlay Designations Adopted**

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The following overlay zones apply in various areas:

<b>Overlay Zoning Category</b>	<b>Symbol</b>
1. Holmes Point Overlay Zone <del>“HP”</del> <u>“HPO”</u>	“AE”
2. Adult Activities Overlay Zone	“HL”
3. Historic Landmark Overlay Zone	“EQ”
4. Equestrian Overlay Zone	
5. Secure Community Transition Facility	“SCTF”

(Ord. 4196 § 1, 2009; Ord. 3954 § 1, 2004)

**Janice Coogan**

---

**From:** Eric Shields  
**Sent:** Monday, April 23, 2018 2:04 PM  
**To:** Jeremy McMahan; Deborah Powers; Janice Coogan  
**Subject:** FW: HP zone development projects / new LSM inspector program  
**Attachments:** hpo city inspectors pw row construction 812.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

FYI

Eric

**From:** goodwin [mailto:goodwin.hp@gmail.com]  
**Sent:** Sunday, April 22, 2018 8:53 AM  
**To:** Dave Asher  
**Cc:** Scott Morris; Amy Walen; Jay Arnold; Tom Neir; Penny Sweet; Toby Nixon; Jon Pascal; Rick Smith; George Finkenstaedt; Planning Commissioners  
**Subject:** HP zone development projects / new LSM inspector program

Hi Dave,

Thank you for meeting last Friday.

As requested, below is list of HP zone developments I've observed over the last 20 months where protected tree(s) came down or where the protected tree(s) were compromised due to interior critical root zone incursions:

11842 Holmes Point Drive  
 13295 Holmes Point Drive  
 12410 Holmes Point Drive  
 12826 Holmes Point Drive  
 12522 Holmes Point Drive

From what I have seen on these properties, I have come to the conclusion site contractors cannot police themselves during LSM activity. I've also learned, working closely with City planners on above projects, that City planners do not have time for additional field inspections to ensure excavation activity is being done properly and that protected tree fencing is not moved.

I believe a solution to this problem would be to establish a LSM Protected Tree Inspector program within the city. This would be an inspection program similar to the Public Works RoW Construction Inspector program that Ray Steiger/Rob Jammerman started dialogue on in 2012 with attached memo.

The Planning Department staff has done a decent job revising the City codes to make protected tree violation penalties more strict; however, the draft language does not do enough to prevent violations from occurring in the first place - which should be Kirkland's primary policy objective. To that end, I would like to propose that the Holmes Point Overlay ordinance specify that City inspectors will oversee LSM activity to ensure tree

retention plans and City codes are complied with. Funding for this new program could be similar to the Public Works RoW construction inspector program model.

More inspections means better compliance, which will protect more trees, improve our air quality, minimize run off and further allow the City to achieve their tree canopy goals.

Furthermore, more inspections will reduce the public/private safety risk of slides in the City's high landslide susceptibility zones.

A LSM protected tree inspector program would be a wise investment.

Sincerely,

Ken Goodwin  
Finn Hill Neighborhood Alliance  
HPO Adhoc committee member

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## CITY OF KIRKLAND

### Department of Public Works

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

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## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Ray Steiger, PE, Public Works Director  
Rob Jammerman, Development Engineering Manager

**Date:** October 8, 2012

**Subject:** PROPOSED SERVICE PACKAGE FOR PUBLIC WORKS RIGHT-OF-WAY  
CONSTRUCTION INSPECTOR

The City Manager is recommending that the Public Works Department hire a permanent full-time ROW Construction Inspector to inspect franchise utility work occurring in the public ROW. Currently this franchise work is not being inspected, and it leaves a large void in the City's maintenance and oversight of the public right-of-way. The justifications for ROW Inspector and the proposed funding of the position are as follows:

1. ***Why do we need a ROW Construction Inspector?*** The Public Works Department is responsible for the maintenance and oversight of the public ROW. These responsibilities include the review and issuance of ROW Permits to all franchise companies working within the City ROW. Franchise companies include Puget Sound Energy (PSE), Comcast, Frontier Communications, Northshore Utility District (NUD), Woodinville Water District (WWD), and several fiber-optic companies. The Public Works Department assigns a Construction Inspector to large franchise projects such as utility main extensions, but does not have the staff to assign a Construction Inspector to small projects such as service installations and routine maintenance work by the franchise company. When there is no construction inspection on the small franchise projects, the contractors are left to their own devices to police themselves while setting up and maintaining traffic and pedestrian control, addressing conflicts with City utility lines, and restoring the ROW.
2. ***What problems have we encountered due to the lack of inspection services on these types of ROW Permits?*** The following is a list of the common problems that staff has encountered with small franchise utility projects when no City inspection has been provided:
  - The contractor does not adhere to the approved traffic and pedestrian control plan (signs and flaggers), and safety problems or traffic disruptions arise.
  - The contractor installs their utility adjacent to a City utility without maintaining required separation. When the City encounters this at a later date, time and money is lost while staff corrects the problem. There are cases where the contractor has

bored their utility through a City-owned utility, and it was only found years later when the City Maintenance crews video-inspected the utility line.

- The contractor does not restore the ROW to City standards. Without a City Inspector on-site, there is no one to verify that the subgrade was prepared and compacted correctly, the depth of the asphalt patch is correct, or if the concrete was placed correctly. Improper installation of asphalt or concrete is sometimes not evident based on the surface workmanship, and problems may not manifest themselves until years later, in which case it usually becomes the City's issue to correct.

3. **How many ROW Permits do we issue to franchise companies?** Public Works issues an average of over 400 small franchise utility project ROW Permits each year (approximately 8/week). The size and scope of each project varies, but most excavation and utility installation or maintenance is completed within a week. The final restoration of the ROW surface usually occurs within a few weeks thereafter.
4. **Why is a ROW Inspector needed now?** With annexation, the amount of ROW that Public Works is responsible for has increased by 59% (145 miles pre-annexation and 247 miles post-annexation). The City's ROW is too large and valuable to continue to allow franchise utility contractors to work in the ROW without any inspection oversight. In hindsight, a case could have been made to address this gap in Public Works inspection duties many years ago, but the increase in public ROW due to annexation has magnified the gap and should be addressed as soon as possible. Addressing this inspection void goes hand-in-hand with the City's other efforts to maintain dependable public street infrastructure.
5. **How will the ROW Inspector be funded?** The Public Works Department has two existing tiers of ROW Permit fees. The first tier ROW Permit fee of \$106.00 covers staff time to intake, review, and issue small franchise permits; none of this fee provides for inspection. The 400 (average/year) ROW Permits mentioned above currently pay this \$106 fee. The second tier ROW Permit Fee is \$372, and it covers staff time to intake, review, issue, and inspect the ROW Permit. This fee is typically assessed against development projects that will be working in the ROW. Staff is proposing to start charging all franchise utility ROW Permits that require inspection the existing second tier ROW Permit fee of \$372. By charging the second tier ROW Permit fee against the small franchise utility projects, an additional \$106,400 will be generated each year. This new revenue will be used to off-set the salary and benefits costs of the new inspector ( $\$372 - \$106 = \$266(\text{new revenue}) \times 400(\text{permits/yr.}) = \$106,400$ ).
6. **What impact will this have on the Franchise Companies?** The additional \$266 permit cost ( $\$372 - \$106 = \$266$ ) should have little impact on the franchise companies' permitting budgets when compared to the ROW Permit fees that they were paying to King County. Prior to annexation, each franchise company was paying a King County ROW Permit fee of approximately \$787 (\$340 for review plus \$447 for average inspection time). Under our proposed fee schedule, franchise companies will be paying approximately \$415 less for ROW Permits in the annexation area (when compared to King County ROW Permit charges). The franchise companies will pay \$266 more for ROW permits in areas that were not part of the annexation area, but Public Works staff

has calculated that the overall impact to each company is essentially a wash as each franchise company will actually realize a small saving (less than \$1,000) each year when compared to what they were paying in permit fees before annexation.

7. ***Do other public agencies provide ROW construction inspection for small franchise utility projects?*** We know that King County, Bellevue, Renton and Redmond all assign a ROW Construction Inspector to small franchise utility projects in the public ROW. We have researched their ROW Permit fees, and have found that each agency charges a fee to pay for the inspection costs. The table below outlines the fees that are collected to pay for construction inspection.

Agency	*Franchise ROW Permit Fee	Notes
Renton	\$350	Charge an additional \$60/hour for larger projects.
Redmond	\$470	\$117 per hour if project exceeds 4 hours inspection
Bellevue	\$298- \$447 (avg.)	Bellevue charges an hourly fee of \$149 and an avg. ROW Permit takes 2-3 hours for review and inspection.
King County	\$749*	\$340 for review and \$447 for inspection (avg.)
Kirkland - proposed	\$372	\$75 per hour if project exceeds 3 hours inspection

\*A straight-line comparison of permit fees between agencies is difficult because each agency has different fee components and recovery rates.

\*\*This King County ROW Inspection Fee was being paid by the franchise companies before we annexed.

In summary, given all of the information presented above, staff believes that it is prudent to move ahead and hire a ROW Construction Inspector to inspect the small franchise utility projects occurring in the public ROW. The position will be funded by fee revenue and will help to protect and preserve our street and ROW infrastructure.



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## Janice Coogan

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**From:** goodwin <goodwin.hp@gmail.com>  
**Sent:** Wednesday, May 23, 2018 9:52 PM  
**To:** Planning Commissioners  
**Cc:** Scott Morris; Janice Coogan; Jeremy McMahan; Adam Weinstein; Deborah Powers  
**Subject:** HPO 5/24 vote

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Commissioners,

I write to you regarding tomorrow's vote on the HPO.

The existing HPO states: ...'to provide an increased level of environmental protection for the Holmes Point area, an urban residential area characterized by a predominance of sensitive environmental features including but not limited to steep slopes, landslide hazard areas and erosion hazard areas.'

Due to the high landslide hazard classification of Holmes Point zone and the city's exposure to public safety risk and damage risk to private/public property, I recommend the commission's vote on 5/24 includes, in the code amendments, a section that empowers the city to make non-minor footprint structure change to accommodate preservation of landmark trees to help reduce said risk.

In KZC Section 70.20.2(a) the FHNA provided language that would give Planning staff the discretion to make building footprint adjustments to preserve landmark trees. Similar language appears in KZC Section 95.51.

This language gives authority to City planners but does not require them to apply it. This authority can be qualified by language that would allow a developer to appeal from a footprint adjustment on the grounds that it denies reasonable economic use of the property. There are sections in City code that reasonable economic use exceptions appear so it's felt this type of exception is supported by the City Attorney.

Thank you for your consideration of this regulation that is very important to the neighborhood.

Respectfully,

Ken Goodwin

FHNA member

Alice L. Blanchard  
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Kirkland, WA 98034  
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May 24, 2018

Ms. Janice Coogan  
Senior Planner  
City of Kirkland Planning  
and Building Department  
123 5th Avenue  
Kirkland, WA 98033

Ms. Deb Powers  
Urban Forester  
City of Kirkland Planning  
and Building Department  
123 5th Avenue  
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Kirkland Planning Commission  
123 5th Avenue  
Kirkland, WA 98033

This Communication is being sent by First  
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and to Finn Hill Neighborhood Alliance  
<board@finnhillalliance.org>

Finn Hill Neighborhood Alliance Board  
Post Office Box 682  
Kirkland, WA 98083

Regarding: Public Hearing Continued for Written Comments Only Until 5/24/2018  
Code Amendments for KZC 70, (Holmes Point Overlay), and Chapter 95 (Tree  
Management and Required Landscaping)  
File CAM18-00080

Dear Ms. Coogan, Ms. Powers, Kirkland Planning Commission and Finn Hill Neighborhood  
Alliance Board:

The following are my comments on the Planning Staff Memorandum dated 5/17/2018,  
following the Planning Commission Hearing on April 26, 2018. These are in addition to the  
written comments I submitted on 4/26/2018.

#### 1. ADOPT STAFF'S PROPOSED AMENDMENT FOR TREE REMOVAL ON LARGER PROPERTIES

Following direction from the Commission, Planning Staff is proposing the Commission  
consider an amendment to KZC 70.15.2 which allows larger properties to remove up to four  
trees every five years with a 1 to 1 replacement required. Staff's proposed language is:

- Properties ½ acre (21,780 sq. ft.) or less may remove up to two trees every five years with a 1:1 replacement tree requirement.
- Properties between ½ acre (21,780 sq. ft.) and 1 acre may remove up to four trees every five years with a 1:1 replacement tree requirement.
- Properties larger than 1 acre (43,560 sq. ft.) where the owners propose to remove more than four trees every five years must submit a Forest Management Plan (including a reforestation plan; a permit application and fee would be required).

**COMMENT:** I urge the Commission to adopt this amendment, but I still suggest for properties larger than ½ acre, no replacement planting be required on a property with higher than the required tree credits.

**SUGGESTION:** Properties with more than 1.5 the number of required tree credits should not have to plant replacements so long as the tree credits remaining following removal were no less than the required amount of credits for that property. The owner, who is already required to provide the city with the location of all significant trees on the property, would be responsible for showing this requirement is met, so this would not require additional staff time.

## 2. REJECT PROPOSAL TO INCREASE CURRENT 30 TREE CREDITS PER ACRE TO 50 TREE CREDITS FOR NON-PNA AREAS

PNA now required is, under KZC 70.20.1.b "at least 25% of the total lot area.", with required tree credits at a density of 150 per acre, with existing retention or planting that is required to be certified by a landscape architect to grow to 100% canopy cover within 20 years.

With a quarter of your lot area already reserved for PNA, staff is now also proposing to increase, from 30 to 50, the credit required for what's left in the non-PNA area. This proposal is not limited to new development, but applies to an owner's remodel if the proposed improvement is more than 50% of the total square footage of existing improvements on the property. (*See 70.20.1.a.1 and 70.20.6.b*) Staff describes this as a "preemptive measure", pending the updated tree canopy report. When it first proposed an increase from 30 to 50 credits in the non-PNA area, staff also stated:

"We must also acknowledge that this higher tree credit will likely mean that trees will cover structures, further limit garden and lawn areas and view sheds, and may reduce sun exposure on solar panels." (*Staff Memo, 4/19/2018, p.7*)

Staff's latest comment on this issue following Commission direction at the 4/26/2018 meeting to report further on whether this increase would conflict with homeowners installing solar panels is:

"Depending on lot size the requirements for PNA designation, tree retention, and tree replacement planting will likely result in increased tree canopy shading and fewer opportunities for solar energy generation, potential view obstruction, limited edible garden area, and reduced potential for turf and other plant selection. The desired high

canopy goals are prioritizing tree retention and replanting over these other possible desires of homeowners." (*Staff Memo 5/14/2018, p.7*)

**COMMENT:** I oppose this because a need for it has not been shown. Also, why impose this new burden on homeowners before the results of the 2018 canopy study are known? In its written comments submitted on April 24th, the FHNA has pointed out that since the PNA already requires 100% canopy cover over a quarter of the lot, the remaining 75% of the site would require only 7% canopy to provide 30% coverage over the full site. (*FHNA letter, p.4*) 30% per lot coverage in the HPO is what several people who submitted written comments prior to the last hearing are advocating. Why should the code burden owners with a major remodel by requiring more? I do not want to limit the possibility of installing solar energy on a major remodel of my property, or have further view obstruction with trees, or limited edible garden area, and reduced potential for grass or other plant selection in the non-PNA areas.

I suspect that many homeowners who do not yet know the impact of this proposed amendment or have not studied the proposal in enough depth to understand its impact, would agree.

### 3. REJECT LIMITING OF HPO TREE CREDITS TO 11 PER TREE

This proposed limitation on tree credit would apply only in the HPO. The proposed amendment in 95.33.1.c "Tree Density Requirement" states:

"In the HPO, no tree shall receive more than eleven tree credits regardless of DBH."

**COMMENT:** I have been advised that the reason for this proposal is to maintain the current level of tree cover. If so, it still puts an unfair burden on property owners with large trees and more than the required amount of tree credits for their property. I do not understand why this has been proposed, and I strongly object to it, especially when so many people want large trees preserved. This discriminates against property owners who maintain large trees on their property by diminishing the number of tree credits they should be given for having such large trees. The owners who make space for and maintain large trees should be rewarded, not punished for having them. Management of such trees often require significant expense as they age, and can actually result in owners with such trees spending thousands of dollars for tree management, as my property has required on the 21 - plus significant size trees. Under Kirkland code, all of such costs must be borne by the homeowner. To my knowledge there is no financial assistance from the city, despite proposals that are currently on the table for large increases in fines to be collected.

### 4. REJECT FORCED RETENTION OF "HIGH VALUE" OR "SPECIMEN" TREES IN NON-PNA AREAS

New 70.20.2.a proposes that all high retention value trees SHALL be retained in the non-PNA portion of a property which is used for garden, lawn or landscaping. If you are doing a major remodel, after reserving 25% of your lot area for PNA, and you used 65% of your remaining area for structures, this mandatory requirement would apply in the 10% you have left

for landscaping. High retention trees are defined to be trees which are viable, healthy and wind firm, which can be required to be retained if they are considered "specimen" trees. "Specimen trees" are vaguely defined as a tree that the city's urban forester considers to be free of major defects, but there is no further requirement as to height or age. Apparently, this could be any significant size tree.

As Planning Staff has pointed out, this is more restrictive than the current requirements to preserve "to the maximum extent possible," as applies in the rest of Kirkland. Since it is already contemplated that a sizeable PNA area has been established, this proposed change would apply a very broad and loose definition which may require property owners to keep existing trees on what will likely be a relatively small leftover area of the property that they could use for their own landscaping. Why not let people have a little landscaping, if that's what they want, without forcing planning on the remaining area to be centered on retention of a specific tree or trees? Owners are currently still required to plan for 30% canopy cover in the non-PNA.

#### 5. PLANNING STAFF DESERVE THANKS FOR ALL THEIR WORK ON THESE ISSUES

Although these comments question some recommendations of the Kirkland Planning Staff, I also wish to state that the staff I have dealt with, particularly Ms. Coogan and Ms. Powers, have been diligent in their attention to matters we are discussing, responsive to requests I have made, and very courteous. Kirkland is fortunate to have such dedicated people working in the Planning Department, which is undoubtedly facing many demands and challenges from all directions these days.

Thank you for taking the time to read what I have submitted.

Respectfully,



Alice L. Blanchard  
11531 Holmes Point Drive NE  
Kirkland, WA 98034

## Janice Coogan

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**From:** Alice L. Blanchard <ablanchardlaw@whidbey.com>  
**Sent:** Thursday, April 26, 2018 3:45 PM  
**To:** Janice Coogan; Planning Commissioners; board@finnhillalliance.org  
**Cc:** Alice L. Blanchard  
**Subject:** Proposed Amendments To Holmes Point Overlay, KZC 70, "Holmes Point Overlay", and KZC 95 "Tree Management and Required Landscaping"

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

### CONFIDENTIALITY NOTICE

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Dear Ms. Coogan, Kirkland Planning Commission and Finn Hill Neighborhood Alliance Board:

I have submitted written comments and/or testified at public hearings before the Kirkland Planning Commission on multiple occasions during 2017 when proposed amendments to the Holmes Point Overlay and KZC Chapter 95 have been discussed. I submit the following written comments in advance of the scheduled Planning Commission Hearing on Thursday, April 26, 2018.

#### Preliminary Statement

The city provided 51 pages of information regarding proposed amendments a week ago. I am still reviewing how proposed changes would fit into the overall scheme affecting the Holmes Point Overlay and the Tree Management Code. I expect my comments, provided earlier today, and oral testimony tonight will be supplemented by more comments, as I take more time to review.

Planning Staff advises that later in 2018 it will do a comprehensive update of KZC 95 and states that at that time any adjustments that are needed to the HPO related amendments could be implemented. The staff also advises that a new tree canopy analysis, updating the 2010 analysis, will not be finished until the end of the year, and may result in changes to tree retention and planting requirements. Since much of what we are discussing here centers on those issues, it may be prudent to delay adopting final recommendations to the HPO and KZC 95 until these events have occurred, rather than pass these code amendments now.

#### A. Time Period For HPO Tree Removal, Consideration For Large Lot Owners

I strongly favor proposals which would allow owners in the Holmes Point Overlay to have the ability to manage trees on their property though rules similar to those available to every other Kirkland property owner. Outside of the HPO, property owners are allowed to remove from developed property up to two significant size trees from their property within a twelve month period, without having to apply for a Tree Removal Permit, provided that they comply with certain conditions. Those are: that there is no active application for development activity for the site, that the trees sought to be removed were not required to be retained or planted as a condition of previous development activity, and that if the tree requested to be removed is one of the last two significant size trees on the property, a tree removal permit and a 1-for -1 replacement is required. KZC 95.23(5)(a)(1-3) and KZC 95.23(5)(b)(1-2).

After more than a year of discussing a provision which would allow Holmes Point Overlay property owners, not in the development process, to have similar tree management rights, Planning Staff is proposing that HPO owners be allowed to remove up to two significant trees from their property within a five year period without applying for a Tree Removal Permit, provided they comply with the same requirements non-HPO owners have. (Proposed KZC 70.15.2).

COMMENT: In previous written and oral testimony, I have advocated that for large lots with many significant trees, if all the required conditions are met, the time period for removal of up to two trees should be the same as the twelve months the other Kirkland property owners have. My lot is 23,456 square feet, (about 1/2 acre). It is over 50% canopy, and has at least 150 tree credits. As the time period was discussed over the past year, I have also met with Planning Staff and representatives of the FHNA and requested that proposed amendments take into consideration the concerns of large lot owners who have a lot more issues regarding tree management. Varying time periods proposed by the FHNA have included three years and ten years. Now Planning proposes five years. I have told Planning and the Alliance that a period longer than one year could be acceptable to larger lot owners provided that code changes also address concerns of larger lot owners. I was advised that attempts were made to incorporate considerations for larger lot owners into these proposed amendments, then heard from Planning on April 18th, that it had not been done. A five year period is insufficient for owners of large lots with lots of trees that are not large enough to qualify for Forest Management, to effectively manage trees that are not hazard or nuisance trees.

#### SOME SUGGESTIONS:

1. Include a provision that owners of lots larger than R-4 zoning size lots in the HPO be allowed to remove up to three trees in a three year period if their lots were 1.5 times or more the size of the R4 zoned lot. Since R-4 is 10,890 square feet, the owner with a lot with at least 16,335 square feet would have the more frequent removal standard.
2. Another measure for allowing certain lot owners to remove more trees more frequently could be the number of credits they have, such as 1 1/2 times the required amount so long as they still have a specified number of tree credits above the minimum required.

3. Exempt large property owners from the rule that requires that for every significant tree removed, a replacement is required, so long as they still have a specified number of tree credits above the minimum required.

I respectfully request that the Commission direct Planning Staff to try to address these concerns.

#### B. Proposed Limitation On Tree Credit, Which Would Apply Only In The HPO

The proposed amendment in 95.33(c) "Tree Density Requirement" states "In the HPO, no tree shall receive more than eleven tree credits regardless of DBH."

COMMENT: I strongly object to this provision. This discriminates against property owners who maintain large trees on their property by diminishing the number of tree credits they should be given for having such large trees. It may actually encourage owners to get rid of larger trees if their credits are limited. The owners who make space for and maintain large trees should be rewarded, not punished for maintaining them, as management of such trees often require significant expense as they age, and can actually result in owners with such trees expending thousands of dollars for tree management. Under Kirkland code, all of such costs must be borne by the homeowner.

#### C. Retention Of "High Value" Or "Specimen" Trees in Non-PNA Areas

In property under development, the rules now require that 25% of the lot be designated as a Protected Natural Area. Planning now proposes that this PNA requirement also be applied if you are remodeling or adding on, and the proposed improvements are more than 50% of the square footage you already have. This is a significant requirement which would be a major change to a lot.

In addition, new 70.20.2(a) proposes that all high retention value trees SHALL be retained in the non-PNA portion of a property which is used for garden, lawn or landscaping. If you used 65% of your remaining 75% for structures, this would apply in the 10% you have left for landscaping. High retention trees are defined to be trees which are viable, healthy and wind firm, which can be required to be retained if they are considered "specimen" trees. "Specimen trees" are defined as a tree that the city's urban forester considers to be free of major defects, but there is no further requirement as to height or age. Apparently, this could be any significant size tree.

As Planning Staff has pointed out, this is more restrictive than the current requirements to "retain where feasible" or "to the maximum extent possible." Since it is already contemplated that a sizeable PNA area has been established, this proposed change would apply a very broad and loose definition which may require property owners to keep existing trees on what may be a relatively small leftover area of the property that they could use for their own landscaping. Moreover, Planning Staff is also recommending increasing the tree density credits in the non-PNA area from thirty to fifty, which the staff acknowledges would "likely mean that trees will cover structures, further limit garden and lawn areas and view sheds, and may reduce sun exposure on solar panels." (Staff Memo 4/19/18, p.7.) All of these proposed changes, taken together, seem like overkill.

Thank you for allowing me to express my concerns and for taking the time to read what I have submitted.

Respectfully,  
Alice L. Blanchard  
11531 Holmes Point Drive NE  
Kirkland, WA 98034

## Janice Coogan

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**From:** Deborah Knetzger <debknetz@comcast.net>  
**Sent:** Wednesday, May 23, 2018 4:19 PM  
**To:** Janice Coogan  
**Subject:** Holmes Point Overlay Code, resident's comments

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Janice,

I have read and approve of the Holmes Point Overlay Code area tree public policy. Thanks for all your hard work and many hours of meeting with Finn Hill Neighborhood Alliance on this matter.

Enforcement still seems to be the stumbling block for private owners moving in now, current residents and for developers building new houses. We have witnessed several instances of builders who are fencing off significant trees, only to remove or top them after construction is completed. This is apparent compliance with city policy until a scheduled inspection is passed, then getting rid of the tree anyway. We understand the city budget doesn't allow for enough inspectors to keep watch on all the trees. Here is where residents need to be watchful and report when we notice something's not right.

One solution might be to require a large-amount bond be posted as part of the permitting process, with significant trees photographed and marked. After construction and sale is complete, Kirkland inspectors determine if trees have been left in place and bond amounts can be refunded.

Understandably, homeowners feel they have a right to their view and to landscape their property as they please. However, removing trees of significant growth and size must be restricted. People new to the area should be informed and must understand that abiding by Kirkland tree canopy retention policy is especially important in the Finn Hill/Denny Creek watershed area.

I plan to attend the public meeting on May 25, 2018

Thanks,  
Deborah Knetzger. 7235 NE 116th Street, Kirkland WA 98034 425-829-4987



April 25, 2018

Honorable Colleen Cullen, Chair  
Kirkland Planning Commission  
123 5<sup>th</sup> Avenue  
Kirkland, WA 98033

RE: Zoning Code Amendments for Holmes Point Overlay Chapter 70 Kirkland Zoning Code (KZC) and Tree Management and Required Landscaping Chapter 95 KZC, File CAM18-00080

Dear Chair Cullen and Planning Commissioners:

The Master Builders Association of King and Snohomish Counties (MBA) is pleased to provide comment to the Planning Commission regarding the zoning code amendments for Holmes Point Overlay Chapter 70 Kirkland Zoning Code (KZC) and Tree Management and Required Landscaping Chapter 95 KZC, File CAM18-00080.

With nearly 2,900 members, the MBA is the largest local homebuilder's association in the United States. Our members are dedicated to working with local jurisdictions to build quality, accessible housing while ensuring they comply with codes that strive to preserve community character and protect the environment.

The MBA recognizes the time and effort Planning Staff has placed into the proposed amendments, however, we offer the following proposed revisions for your consideration and adoption.

**Chapter 70 KZC and Tree Management and Required Landscaping Chapter 95 KZC**

Below are comments in support and opposition to specific sections of KZC Chapter 70 and KZC Chapter 95:

**70.20.1:** The MBA supports consolidation or clustering of PNAs with short plats, subdivisions and land surface modifications with the goal to improve functionality and quality of Protected Natural Areas (PNAs) and site design efficiency.

**70.20.2** The MBA opposes amended language requiring all high retention value trees be "required to be retained" rather than "retain where feasible" or "to the maximum extent possible," and that a property owner needs to "exhaust all variations and incentives allowed by code in KZC 95.32 to retain trees" with the only remedy being



variance review. The MBA does not believe there is an issue with high value trees not being retained to the maximum extent possible by its members, and that more restrictive regulations are unnecessary. In addition, variance review is costly and time consuming, adding to the cost of homes and the shortage of housing.

**70.20.6 & 7:** The MBA opposes required bonding for the applicant to ensure long-term maintenance of the PNA, a proposed landscape plan prepared by a licensed landscape architect, and written verification by a landscape architect at final inspection that the landscape plan has been installed as approved. These additional layers are unnecessary, costly, and time consuming.

**95.10:** The MBA opposes the new inner critical root zone definition and would apply a dripline definition for maintenance of root viability and construction impact. The new definition is excessively restrictive and unnecessary.

**95.32:** The MBA would support code language that automatically increases lot coverage and floor area ratio requirements proportionate to the reduction in lot size resulting from the consolidated PNA.

**KZC 15:** The MBA opposes the request for lower density zoning by eliminating the allowance for rounding up the number of lots when the density calculation is in a fraction of .5 or greater. In a time of lack of buildable land, high land costs, extraordinary population growth, skyrocketing housing costs, and dwindling housing supply, the MBA supports city staff's denial of this request.

**Public Outreach:** The MBA supports improved mybuildingpermit.com functionality and city budgeting for the project. My Building Permit has proven an effective, efficient tool for both industry and local jurisdictions, and is a valuable investment.

#### **Discussion**

Staff notes on page 11 of the Planning Commission Report that even by simply using the current tree credit requirements as adopted under today's code has "contributed to a significant increase (4.4 percent, or 299 acres) in City-wide tree canopy cover between 2002 and 2010."

In addition, the city recently adopted rezones in the HPO in December 2017 and upcoming geohazard approvals will likely result in fewer tree removals to abate landslide dangers that will improve canopy cover and tree retention in the HPO.

A full Urban Canopy Assessment is also currently underway that will assess citywide canopy cover as well as canopy cover in neighborhoods, parks and single family residential, the data from which will be used to gauge the effectiveness of tree codes and compare to previous tree canopy assessments (completed in 2010). The full report and data will be available by the end of the year.



And as part of the 2018 work plan, staff intends to work with the community and various stakeholders on more extensive updates to Chapter 95. It seems with the Urban Canopy Assessment and Chapter 95 update both looming, any changes to tree canopy policy or code amendments related to tree retention should be postponed until these two important and insightful items are complete.

It seems with all these successes and current work underway to improve tree canopy and retention, why more regulation and more cost here and now? Where are the significant problems within the HPO that are triggering the additional amendments restricting use of property, hand tying site design, and requiring costly appeal?

While the MBA is not opposed to reasonable regulations that fix a problem, we are opposed to regulations that seem to offer negligible impact when there's no definable problem. Current regulations seem to be working. And with the Urban Canopy Assessment findings and revisions to Chapter 95 yet to come, lets wait to add any more regulations until we better understand the full picture.

Thank you for your consideration. If you have any questions, please feel free to contact me at [gclark@mbaks.com](mailto:gclark@mbaks.com) or (425) 460-8224.

Sincerely,

Gina Clark

Government Affairs, King County Manager  
Master Builders Association of King and Snohomish Counties

cc: Amy Walen, Mayor  
Eric Shields, Planning Director  
Adam Weinstein, Deputy Planning Director  
Janice Coogan, Senior Planner  
Deb Powers, Urban Forester



## Janice Coogan

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**From:** Eric Shields  
**Sent:** Friday, April 27, 2018 8:16 AM  
**To:** Janice Coogan  
**Subject:** FW: Holmes Point Tree Plan

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Eric

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**From:** Ellen Haas [mailto:ellen.haas@comcast.net]  
**Sent:** Thursday, April 26, 2018 9:54 PM  
**To:** Planning Commissioners  
**Subject:** Holmes Point Tree Plan

Dear Commissioners

I am sorry to have missed the hearing tonight. Please consider me an enthusiastic supporter of the plan, as many of you know. This plan has resulted from a lot of dedicated work and good listening and detailed adjustments. I hope it will be passed and speedily implemented.

Ellen Haas  
11228 Champagne Pt Rd NE  
Kirkland, 98034

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**From:** Claire Koenig [<mailto:claireakoenig@frontier.com>]

**Sent:** Thursday, April 26, 2018 10:32 AM

**To:** City Council

**Subject:** Holmes Point Trees

Hello,

My name is Claire Koenig and I've been a resident of Holmes Point for over eight years. I love this neighborhood!

I want to let you know that I do support the amendments to the HPO as I feel it is urgently important that we preserve the tree canopy. It is habitat to migrating birds and owls. It improves the quality of life in that the trees are beautiful and are a part of our neighborhood character. And the trees are important in stabilizing the ground from further erosion. I have written before about the fact that when property above us was clear-cut for a housing development, that we suffered flooding in our finished basement. Even now, the storm drain in front of my house floods several times a year; wiping away plants and soil and carrying it further down the road and into the lake.

After years of watching contractors come in and scrape away every single bit of greenery from lots, it comes as a huge sigh of relief that they will no longer be able to do this. It is my understanding that not every tree can be taken from a lot and that additional trees must be planted after construction is finished to comply with a 50% tree canopy after 20 years. Thank you, thank you!

I would also like to stress that in the event a property owner has a native tree that is dying, that they are not overcharged for a permit to extract that tree. Trees do die and need to be replaced. The course of nature shouldn't be charged as penalty to homeowners who are doing the right thing.

Thanks for being such a great council and for listening to the public!

Claire Koenig

425-823-0353

6310 NW 129th Street  
Kirkland, WA 98034

## Janice Coogan

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**From:** Adam Weinstein  
**Sent:** Thursday, April 26, 2018 4:48 PM  
**To:** Janice Coogan; Deborah Powers  
**Subject:** FW: Holmes Point Overlay

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**From:** Amy Kolve [mailto:amy.kolve@gmail.com]  
**Sent:** Wednesday, April 25, 2018 6:33 PM  
**To:** Planning Commissioners  
**Subject:** Holmes Point Overlay

Dear Planning Committee,

I am a long time resident of Kirkland and strongly support the suggested revisions to protect trees in the Holmes Point Overlay as recommended by the FHNA. Trees are a silent resident of Kirkland and need to be respected because of their significant contribution to all our quality of life and need us to work towards their protection and careful management. I am currently traveling around the west coast and in neighborhoods like Carmel by the sea and many others, it is the long time aging and elegant trees that lend beauty and sculpture to the environment. Without trees neighborhoods would be very plain and lacking birds and song.

Thanks,  
Amy Kolve  
7202 NE 119th Pl  
Kirkland

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Amy Kolve

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## Janice Coogan

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**From:** Adam Weinstein  
**Sent:** Thursday, April 26, 2018 4:47 PM  
**To:** Deborah Powers; Janice Coogan  
**Subject:** FW: Holmes Point Tree Ordinance

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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**From:** Leslie Montgomery Tinti [mailto:leslie@tinti.com]  
**Sent:** Thursday, April 26, 2018 12:46 PM  
**To:** Planning Commissioners  
**Subject:** Holmes Point Tree Ordinance

Dear Planning Commissioners,

Thank you for all of your hard work in producing a much-improved Holmes Point tree ordinance! There are a few important issues in regards to the protection of existing trees that still need to be addressed.

We would like to ensure that both homeowners who are removing trees and developers who are building new lots won't reduce the tree canopy over their properties to less than 30%.

We also want the City to require builders to do all they can to retain landmark or heritage trees (mature trees of notable size and good health) in their construction plans. What is the definition of a tree of good health: Continue to live beyond 30 years? This would mean that building footprints should be modified if necessary to save a landmark or heritage tree.

We would like tree retention plans to identify any significant trees (including those on adjacent properties) whose root zones may be damaged by development. The developer's certified arborist and the City's arborist should agree in writing whether the tree will be able to survive the proposed construction activity and whether mitigation measures need to be adopted.

Finally, we want more frequent inspections by the City of Kirkland of development activity. Currently, the City of Kirkland does not have sufficient inspection staff to monitor land clearing and grading as building sites are prepared for construction. Consequently, protective fencing around trees is moved around trees that are supposed to be preserved; all too often, the result is that the root of these trees is cut during grading or utility installations or the ground is compacting in a way that compromises the tree's ability to survive. We're offering some amendments to facilitate more inspections but what we really need are more inspectors.

Sincerely,

Tim & Leslie Tinti

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## Janice Coogan

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**From:** Adam Weinstein  
**Sent:** Thursday, April 26, 2018 4:47 PM  
**To:** Janice Coogan; Deborah Powers  
**Subject:** FW: Holmes Point Overlay ordinance

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**From:** Jessica Paige [mailto:jessicaepaige@gmail.com]  
**Sent:** Wednesday, April 25, 2018 7:03 PM  
**To:** Planning Commissioners  
**Subject:** Holmes Point Overlay ordinance

Dear members of the Planning Commission,

I wanted to thank you for making so many improvements to the ordinance, and also to ask you to please continue to take further steps to manage surface water wisely, prevent mudslides and keep Finn Hill green. I would like to voice my support for the FNHA recommendations that further action be taken to ensure that the tree canopy is not reduced below 30%, require builders to retain landmark or heritage trees (even if they need to modify their building footprints) and protect root zones for significant trees.

As a Finn Hill resident, I'm very concerned to see the character of our neighborhoods changing with so much development. I am especially concerned that even though the City is technically requiring developers to take actions to protect trees, it is not always happening. Without frequent inspections and enforcement, developers simply do not have the incentive to take action. Please increase inspections so that the intentions of the City and our residents are actually being carried out.

Thanks so much,

Jessica Paige  
7703 NE 142nd Ct.  
Kirkland, WA

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## Janice Coogan

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**From:** Robert Knetzger <neotobob@comcast.net>  
**Sent:** Wednesday, May 23, 2018 11:56 AM  
**To:** Planning Commissioners  
**Cc:** Janice Coogan  
**Subject:** public comment on 5/24/2018 meeting

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

First, thanks for all the consideration and attention granted to these important issues. I'm impressed by the thoughtful process, patience and seriousness taken by the Planning Commission to help get this right and preserve the unique and sensitive character of the Holmes Point area. If lost it would never be recovered.

I'm a +30 year resident/homeowner in the Holms Point area. The very first neighborhood meeting of what became the Denny Creek Alliance (now part of Finn Hill Alliance) took place on our deck in the shadows of the same trees we're now all working to protect. FHNA representatives are just the tip of the iceberg of a larger community of many more people who chose to live on the slopes and under the trees of the HPO. We thank you.

I'm writing in support of the FHNA recommendations:

1. Please amend the KZC 15 to exclude easements and eliminate rounding. It would be a shame to have the lower density from thoughtful downzoning compromised by some technical loopholes and creative calculations.
2. I agree with the request for increased inspection on development sites, but I understand the practical limits and costs. I support the idea of having developers meeting with planners at the very outset to agree on a tree retention plan, require developers to post a large bond for each tree to be retained, and then have only one inspection upon completion. The loss of "protected" trees is tragic. I see many developments (even single houses) where the existing multi-step procedure is thwarted and trees end up destroyed anyway.

Here's one on Holmes Point Drive:



Top is BEFORE. Note the two large trees to the right of the driveway...

Middle is DURING construction. The trees are sequestered. Saving some significant trees. Nice!

Bottom is AFTER:

Oops—what happened? The two trees are destroyed.

Here's another at 73rd Ave NE:



Top is before. Middle and bottom is during construction: significant clearing for driveways and foundation, widening 73<sup>rd</sup> Ave, etc. with trees to be retained around the perimeter, sequestered by the chain link fence, but then later significant number of trees inside the protected area and topped and destroyed.

I think a procedure of: 1.) Agreed plan for trees to be retained, 2.) Bonds posted for each individual tree before any construction, 3.) one final inspection to satisfy tree retention before refunding the bonds. Multiple inspections or steps not needed.

3. I also support the adding of more stringent requirements in the HPO for tree retention. Perhaps there is a way to accommodate this and still consistently use the same metrics as for the rest of Kirkland by including an additional HPO factor into the existing significant tree formula. This could go a long way towards actually getting to protecting the tree canopy even if that means getting there form measuring tree trunk diameters.

Thanks again for the consideration and care taken on these issues,

Bob Knetzger

7235 NE 116<sup>th</sup> ST

Kirkland, WA 98034

[neotoybob@comcast.net](mailto:neotoybob@comcast.net)

425.823.9251



April 24, 2018

Kirkland Planning Commission  
Kirkland City Hall  
123 Fifth Avenue  
Kirkland WA 98033

Re: Zoning Code Amendments to Holmes Point Overlay Chapter 70 Kirkland Zoning Code (KZC) and Tree Management and Required Landscaping Chapter 95 KZC, File CAM 18-00080

Dear Commissioners,

On behalf of the board of the Finn Hill Neighborhood Alliance (FHNA), I am writing in regard to the Planning Department's recommendations to revise the Holmes Point Overlay (HPO) ordinance and to make conforming amendments to the city's general tree ordinance. FHNA is extremely appreciative of the time and attention that you and, in particular, the City's planners have devoted to updating the HPO ordinance.

For the most part, we feel that the HPO will be improved considerably if the changes recommended by the staff are codified. However, as we outline below, there are several points on which we have not reached agreement with staff; these relate primarily to provisions aimed at protecting mature trees during the development process. There are also several code language drafting issues that we believe should be discussed before amendments are sent forward to the Council. We therefore request that you defer acting on the staff recommendations until your May 24 meeting. By that time, we hope that we will have had a final opportunity to resolve points on which we still differ with the staff and to refine code language as appropriate.

#### Background

The Holmes Point neighborhood is characterized by steep wooded slopes, ravines, creeks, and soils that are susceptible to erosion and slides. The HPO was originally adopted by King County in the 1990s to preserve the area's existing tree canopy as a means of mitigating the risks of slides, reducing surface water runoff, and preserving the neighborhood's forested character. Since then, and particularly within the last few years, development activity has proven that the

HPO is only moderately effective in protecting established trees during development activity. On the hand, by prohibiting the removal of significant trees (except during development), the HPO has restricted homeowners from making relatively minor landscaping changes on their properties.

As part of the Finn Hill neighborhood plan, Holmes Point residents reaffirmed their desire to bolster protections of their neighborhood's tree canopy while allowing some flexibility to homeowners to remove unwanted trees. Since late 2016, we have worked with the City's staff to address these concerns. As noted above, the staff has committed significant time to working through a variety of complicated issue with us and we are grateful for the attention they have given to this project. And notable improvements have been made: much of Holmes Point was downzoned earlier this year, allowing for more tree canopy to be preserved. Furthermore, the City required last fall that Holmes Point subdivisions and short plats be permitted through integrated development plans, which require that tree retention plans be considered and finalized at the outset of the development process rather than undergoing adjustment as sites are graded and building lots are improved.

#### Proposed HPO and city tree ordinance revisions – points of agreement

The staff has now forwarded recommendations that should make the HPO a more effective ordinance in several respects. We list what we regard as the four most important improvements below:

*Removal by homeowners of unwanted trees (see issue 18 on the staff's issues chart).* The proposed amendments would allow a homeowner to remove up to two significant trees from his or her property every five years provided that each tree is replaced with a new planting. This represents a material change to the current ordinance, which prohibits the removal of any significant tree unless it is shown to be diseased or a nuisance. We support this revision as a reasonable balance of a resident's desire to make improvements to his or her home and the need to preserve the neighborhood's tree canopy. We recommend, however, that the staff's proposed revision include language requiring the homeowner to provide in the tree removal request form a diagram showing the location of the trees to be removed and also to notify the City after tree removal occurs that replacement trees have been planted. In the absence of such communications from the homeowner, we would be concerned that compliance with the HPO by homeowners will decline over time. (See FHNA's proposed revision to KZC 70.15.2, attached.)

*Creation of PNAs in multi-lot developments (see issue 8).* We support the notion that PNAs in subdivisions and short plats should be aggregated to create natural spaces for trees and native vegetation that will be larger than would be the case if each homesite in the subdivision was allocated its own PNA. A consolidated PNA may not be the best solution in every case, however. The proposed code language gives the Planning Department discretion to consolidate PNAs or to disaggregate them in order to achieve the best outcome in terms of protecting trees, and we hope that planners will take this responsibility seriously.

*50% canopy goal for multi-lot tree retention plans (see issue 11).* We are particularly pleased that the staff has proposed that a developer's tree retention plans should be prepared by a licensed landscape architect to include plantings that will generate a 50% canopy in twenty years' time and that the architect will be required to certify prior to final approval that the plantings were installed as specified. While this provision does not guarantee that a robust canopy will develop over a period of two decades, it does at least ensure that a baseline is established for achieving that goal. Reference to a 50% tree canopy, as opposed to tree credits (which FHNA continues to find problematic<sup>1</sup>), should not be difficult to administer because the plan will be prepared by a professional, who should be well acquainted with tree canopy data, and will be reviewed by the City's arborist, who should likewise be familiar with canopy measurements.

*Meaningful penalties (see issue 17).* We endorse the staff's recommendation to stiffen the penalties for violating the HPO and the city's tree ordinance. As the staff memo points out, revisions to the Municipal Code to implement these proposals are not within the purview of the Planning Commission but they represent a critical part of ensuring the tree protection standards are complied with. We are hopeful that the staff recommendations regarding fines and license revocations for violations will be adopted by the City Council. As we note at the conclusion of this letter, we also believe that more resources for an effective inspection program are an essential element of a successful tree preservation program.

#### Points on which City staff and FHNA have not agreed

Our principal concern with the staff's proposed modification of the HPO is that it does not effectively protect the neighborhood's existing trees against removal by developers or homeowners. While it is important to ensure that tree loss due to development or due to permitted cutting by homeowners is replaced with new plantings, it is vital that the mature trees that remain in Holmes Point today are preserved. These are the trees that hold soils in

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<sup>1</sup> In its April 26, 2017, and August 22, 2017, letters to the Planning Commission about the HPO, FHNA stated that it preferred that tree retention and tree replacement requirements be expressed in terms of canopy percentages because they were directly related to the neighborhoods goal of sustaining a certain percentage of tree canopy cover, whereas tree credits were not clearly related to the achievement of that goal. We said that we would be willing to support the use of tree credits if an equation of credits to canopy percentages could be demonstrated. The staff has produced a white paper that attempts to establish such an equation. (See attachment to staff memo of April 19, 2018.) Unfortunately, the white paper is fundamentally flawed in that it attempts to link tree credits with canopy cover using one tree species, a red maple, whose a crown (used for calculating canopy cover) is considerably larger than the crowns of the coniferous trees that are native to our area and are generally preferred for revegetation. The number of tree credits that would be needed to achieve a given level of canopy coverage is much higher in the case of all conifers and many deciduous trees than is indicated by the use of a red maple. However, because the staff has agreed to use a tree canopy percentage as the goal for tree retention plans, FHNA does not see any need at this time to debate whether tree credits are an appropriate measure for replanting requirements. The issue should be explored in greater depth when the City reviews its general tree ordinance later this year or in 2019.

place and that absorb water, protecting hillsides and minimizing pollution of streams and Lake Washington. Preserving established trees and groves should be a top priority of the HPO.

*Floor for tree removals (see issue 13).* FHNA proposed over a year ago that some minimum threshold should be established for site clearing in the context of new developments and for tree removals by homeowners. We suggested that such activities should not be allowed to reduce a site's existing canopy cover below 30%. We believe this standard is will not unduly restrict either developers or homeowners. In the case of the development of subdivisions or shortplats, the aggregated PNAs (discussed above) should provide a high percentage of canopy cover over a concentrated area of the project site, which should significantly reduce the "burden" of retaining canopy cover over the remainder of the site needed to achieve an overall canopy cover of 30%. For example, if the subdivision's PNA has 100% canopy cover (representing canopy coverage of 25% of the full subdivision site), the remaining 75% of the site would need only 7% canopy cover to provide 30% coverage over the full site. If the PNA had only 60% canopy cover at the time it was established, the remaining 75% of the site would need only 20% canopy cover to achieve the 30% canopy floor. The canopy requirements in non-PNA areas are low enough, in our view, that they should not unreasonably curtail development. Also, because tree retention plans for multi-lot developments must be prepared and reviewed by qualified professionals, we believe that the use of a tree canopy percentage would not represent an administrative burden to the developer or the City.

In regard to tree removals by homeowners, FHNA recommends that the homeowner's tree removal request form include a certification that the proposed removals will not reduce the canopy over his or her property below 30%. Staff has suggested that homeowners are ill-equipped to make such an assessment. FHNA disagrees. Homeowners now have access to satellite imagery and online canopy calculation tools that enable them to estimate current canopy coverage and the coverage that will remain following the removal of one or two trees. Also, it should be noted that the homeowner's request form will not be subject to independent analysis by the City. Good faith estimates should be sufficient. But some floor for Finn Hill, other than the two tree per parcel standard set in the general tree ordinance, is warranted.

Staff has asserted that the imposition of a canopy floor is unnecessary to protect existing trees because the revised HPO contains language stating that significant trees in side yards and landscaped areas cannot be removed and because the preparation of tree retention plans as part of the IDP process should minimize unnecessary elimination of mature trees. These are helpful measures. However, the current HPO already says that significant trees "must be retained", so the new language protecting high retention value trees does not actually represent a substantive change from existing legislation. And if these measures prove to be effective in protecting trees during development activity, the 30% floor advocated by FHNA should not represent an additional restriction on property development. The benefits to be derived from the new high retention value tree language and from the IDP are speculative; the 30% canopy

minimum has the advantage of being specific and directly related to preserving existing canopy cover.

*Definition of high retention value trees (see issue 12).* As noted above, the staff has proposed language that requires all high retention value trees be retained. While the current ordinance already states that all significant trees must be retained, the staff proposal is an improvement to the extent that it overwrites an apparent interpretation that the current ordinance requires that significant trees be retained only “if feasible”<sup>2</sup>. FHNA has long contended that this interpretation has no basis in the ordinance, but FHNA welcomes the new language because it should eliminate that interpretation once and for all.

Unfortunately, the definition of high retention value tree in Chapter 95 is unclear: it is difficult to determine whether the definition applies both to all viable trees in “required” side yards and landscaping areas and to trees on slopes of 10% or greater and in groves, or whether it applies only to such trees if they are in required side yards and landscaping areas. Also, the use “required” as a qualifier leaves unclear whether trees in any side yards or landscaping areas in the Holmes Point are high retention value trees (as the staff has indicated they are intended to be). FHNA has therefore suggested revisions to the high value retention tree definition in order to avoid confusion in the future.

*Protection of Landmark trees (see issue 12).* Arborists note that while it is useful to set canopy coverage goals, it is also important to protect the quality of the trees that comprise that canopy. Accordingly, FHNA has advocated for provisions that provide special status to trees of exceptional value. The ordinances of Lake Forest Park and Carmel, California, state straightforwardly that such trees may not be removed, subject to a showing by the developer or homeowner that retention of the tree would deprive the applicant of all reasonable economic use of the property. While FHNA would enthusiastically support including such a provision in the HPO, and is confident that it would not represent an illegal taking (given that the same standard is used by Kirkland in its wetlands protection ordinance), we recognize that it is unlikely that the City would embrace this formulation for protecting exceptional trees. We have therefore proposed instead that the Planning staff be authorized to modify building footprints to accommodate “landmark” trees and we have offered a definition of such trees that is based on language found in the City of Medina ordinance. This proposed amendment expands the authority already given to planners to make minor footprint modifications to preserve trees by giving the staff discretion to require more significant adjustments if needed to save a particularly valuable tree in the Holmes Point neighborhood.

*Critical root zone incursions (see issue 14).* In its discussions with staff, FHNA understood that the HPO would be revised to discourage grading and trenching activities that compromise the

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<sup>2</sup> Language in the current HPO ordinance regarding what is “feasible” and what should be protected “to the maximum extent possible” relates to the designation of PNAs, not to the retention of significant trees. Compare KZC 70.15.3a with KZC 70.15.3c (current code language).

health of trees by compacting soil or trenching within the critical root zones of significant trees. The staff's proposed ordinance amendments include a definition of critical root zone but provisions relating to development activities around significant trees continue to be expressed in terms of the "limit of disturbance" surrounding a tree, which is defined as the area which the developer's tree professional has concluded is necessary for maintaining the health of the tree; that area may be considerably smaller than the critical root zone. To ensure that such judgments receive appropriate scrutiny by the City, FHNA has proposed that tree plans should include information about each tree in whose critical root zone development activity will occur. If the developer's arborist concludes that such activity will not be harmful to the tree, the retention plan should include an explanation for the decision and, if mitigating aftercare is required to ensure the health of the tree, the plan should specify the aftercare procedures needed. The City's arborist should assess these conclusions and approve the plan only if he or she agrees that they are justified<sup>3</sup>.

*Concerns about illegal takings.* Staff has expressed concerns that several of the recommendations proposed by FHNA would increase the City's exposure to takings claims. FHNA has not performed a legal analysis of what constitutes a valid takings claim. It is probable that such claims are highly fact specific. However, we note that the City has a procedure for requesting variances and, as mentioned above, many cities – including Kirkland – have specified that prohibitions on certain forms of land use will be relaxed upon a showing by the affected owner that compliance would deprive the owner of any reasonable economic use of the property. It is our understanding, based on a conversation with counsel to the City of Lake Forest Park, that this exception is sufficient to protect the City from an illegal takings claim. FHNA would support the inclusion of such an exception standard in conjunction with the proposals it has summarized above.

#### Importance of a robust inspection program

Adopting strong but fair amendments to the HPO is a critical step toward effective protection of the tree canopy in the Holmes Point neighborhood. But the benefits of a revised ordinance will be lost unless development activity is monitored closely by City inspectors. Holmes Point residents have observed numerous instances in which construction crews have moved fences during grading activity, causing significant damage to trees that were supposed to be protected. It is clear that inspections during the course of such activities are needed. We have therefore added language to Chapter 70 to indicate that such inspections will occur. More importantly, we

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<sup>3</sup> FHNA has also noted in its comments on Chapter 95 KZC that the staff revision of the tree retention plan table in KZC 95.30 appears to be incomplete with respect to tree retention plans for development activity within the HPO area. Our focus is on ensuring that tree retention plans for all types of development in the HPO include appropriate detail about impacts on significant trees. We also want to ensure that the small sector of the HPO that is covered by multi-family and professional zoning is appropriately covered by tree retention plan requirements. We have therefore added some "Xs" to the table. However, we have not discussed with staff whether our additions are actually required or whether other aspects of the proposed amendments to Chapters 70 and 95 address our concerns.

will also advocate before the Council that additional funding must be found to support the cost of such inspections. We hope that the Commission and City staff will concur that tree preservation will be markedly enhanced if compliance inspection resources are increased.

FHNA's proposed code revisions

Attached to this letter are revisions that FHNA proposes be made to the staff's recommended amendments to Chapters 70 and 95 of the Zoning Code and to Title 1 of the Municipal Code (pertaining to fines). The FHNA revisions are shown as redlines to staff drafts dated April 13, 2018. We believe that the April 13 drafts are the same as those forwarded to the Commission on April 20 with the exception of language added last week by the staff to KZC 70.20.6-7 concerning the preparation and review of tree retention plans by a developer's landscape architect. We have not confirmed this assumption, however.

Shortly after reviewing the staff's April 13 drafts, we submitted comments and edits similar to those summarized above. We met with staff to discuss these edits on April 17 but focused exclusively at that meeting on the relative merits of tree canopy percentages and tree credits. That meeting was constructive in that it resulted in a staff proposal to require that a developer's landscape architect prepare tree retention plans designed to produce a 50% canopy in twenty years' time. However, we did not have time at the meeting to address any other issues concerning the HPO. We therefore request the opportunity to meet with staff again between now and May 24<sup>th</sup> to review our proposed revisions. We believe that additional discussions will result in a tighter draft of the HPO and we hope they will further narrow the matters on which FHNA and staff have different points of view.

Thank you for considering these observations on a regulation that is very important to the Holmes Point community.

Respectfully submitted,

FINN HILL NEIGHBORHOOD ALLIANCE



Scott Morris, President

Attachments: Chapter 70 KZC, Chapter 95 KZC, Title 1 Kirkland Municipal Code

Cc: Janice Coogan  
Jeremy McMahan  
Adam Weinstein  
Eric Shields  
Kirkland City Council  
FHNA Board of Director

**KZC Chapter 70 – [DRAFT CLEAN COPY] HOLMES POINT OVERLAY ZONE AMENDMENTS 4/13/18**

**Sections:**

- 70.05 Purpose and Intent
- 70.10 Applicability
- 70.15 Tree Removal – Not Associated with Development Activity
- 70.20 Tree Retention Associated with Development Activity

**70.05 Purpose and Intent**

The purpose of the Holmes Point Overlay (HPO) development standards is to allow infill at urban densities while providing an increased level of environmental protection for the Holmes Point area, an urban residential area characterized by a predominance of critical areas, fewer roads and other impervious surfaces, dense tree and vegetation cover and wildlife habitat. To further the Finn Hill Neighborhood Plan policies, the standards in this Chapter limit allowable site disturbance; reduce visual impacts of development; maintain community character; protect native trees, vegetation and soils; reduce surface water runoff; protect wildlife habitat; slow the loss of tree canopy resulting from tree removal, and establish requirements to maintain a 60 percent tree canopy goal in the HPO.

(Ord. 4437 § 1, 2014; Ord. 4196 § 1, 2009)

**70.10 Applicability**

This Chapter applies to properties within the HPO Zone on the Kirkland Zoning Map. These regulations add to and in some cases supersede the other regulations of this code, including but not limited to regulations in KZC Chapters 15 (Low Density Residential Zones), 95 (Tree Management and Required Landscaping) and KMC Title 22 (Subdivisions).

Terms and requirements not defined in this section shall be defined as set forth in Chapter 95 KZC

**70.15 Tree Removal – Not Associated with Development Activity**

Tree removal in the HPO that is not associated with development activity is subject to all standards for tree removal, replacements and tree removal permits as described in Chapter 95.23 KZC, subsections (5)(b) through (d) and the following standards:

1. Permit Required – Protected Natural Area (PNA). No trees shall be removed from a designated PNA unless they are hazard or nuisance trees, or are approved for removal as part of a Forest Management Plan. Any tree removal in a PNA shall be authorized through a tree removal permit as provided in this chapter, unless the activity is exempted in KZC 95.20. Permit application, procedures and appeal requirements shall be in accordance to KZC 95.23.2-4. For every significant tree that is removed from a PNA, the applicant shall plant a native tree species of the same deciduous or coniferous type as the removed tree. Replacement trees shall meet the standards of subsection 70.20.1(f) 2.
2. Tree Removal Allowances – Non-PNA Areas. Any private property owner of developed property may remove up to two significant trees from their property, within a five year period without applying for a tree removal permit, provided that the homeowner submits a request form to the City that includes a diagram showing the location of the trees to be removed and affirms that:
  - a. There is no active application for development activity for the site;
  - b. The trees to be removed were not required to be retained or planted as a condition of previous development activity or the provisions of this section; and
  - c. The tree canopy coverage remaining on the property following the proposed tree removals will be no less than 30%.

**Commented [SM1]:** The location information is necessary to discourage the removal of PNA trees or trees that were planted pursuant to a tree retention plan or a replanting requirement (see below).

**Commented [SM2]:** Definitions of “canopy” and “canopy coverage” can be taken from Lake Forest Park ordinance.

For every significant tree that is removed, the planting of one replacement tree is required. Conifer species are the preferred replacement trees in Non-PNA areas in the HPO. The Planning and Building Department shall establish and maintain an approved Tree Species List for tree removal replacements in Non-PNA areas. Replacement trees shall meet the standards of subsection 70.20.1(f) 2. The homeowner shall notify the City in writing when replacement trees have been planted and shall describe the location of the replacement trees in such notice. The homeowner will bear responsibility for maintaining the replacement trees as specified in KZC 95.51.

**Commented [SM3]:** This post-planting notice is required to discourage homeowners from removing or killing replacement trees.

3. **Forest Management Plan.** Private property owners seeking to remove more than two trees ~~for the purpose of long-term stand management~~ that are not exempt under KZC 95.20 may ~~submit~~ apply to do so for the purpose of long-term stand management by submitting a Forest Management Plan per Chapter 95.23 subsection 5(e) KZC.

### 70.20 Tree Retention Associated with Development Activity

The following standards shall be applied to all residential development:

#### 1. Protected Natural Area (PNA) Designation.

- a. Applicability - The requirement for designating and restoring a PNA with vegetation set forth in subsection (4)(a) and (b) applies to:
  - 1) New development or redevelopment, 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.
  - 2) Short Plats and Subdivisions.
  - 3) Land Surface Modification (LSM) permits associated with the development of more than one lot.
- b. Size - At least 25 percent of the total lot area shall be designated as a Protected Natural Area (PNA), in a location and configuration that requires no alteration of existing native soil, native understory, vegetation and trees if a PNA that substantially complies with the standards of 70.20.1(e) can be identified or, if no such PNA exists at the time of designation, in a location and configuration that requires the least alteration of existing native soil, native understory, vegetation and trees.
- c. Location – PNA designation, including subdivisions, short subdivisions and Land Surface Modifications associated with the development of more than one lot shall be consolidated in one larger contiguous area on the subject property unless the City determines that designation of more than one area results in superior protection of existing trees and vegetation. The PNA shall be designated to encompass any critical areas on the lot and, to the maximum extent possible, consist of existing viable trees and native vegetation of varying size, age and species that meet the minimum vegetation condition standards set forth in subsection (1)(e) of this section.
- d. Incentives and Variations to Development Standards - Applicants shall pursue Incentives and Variations to Development Standards per Chapter 95.32 KZC to facilitate consolidation of PNAs.
- e. Minimum Tree and Vegetation Conditions in the PNA - Priority is given to designate contiguous areas containing native vegetation meeting the following standards:
  - 1) Trees – Viable trees at a tree density of 150 tree credits per acre within the PNA, calculated as described in KZC 95.33.

Example: A 10,000-square-foot lot requires a 2,500 sq. ft. PNA (10,000 x 25% = 2,500 sq. ft.). Within the 2,500 sq. ft. PNA, nine (9) tree credits are required (2,500 sq. ft./43,560 sq. ft. = 0.057 acres x 150 tree credits = 8.6, rounded to nine (9) tree credits). Note: the tree density for the remaining lot area is ~~30-50~~ tree credits per acre.

**Commented [SM4]:** Revised to conform with staff language in section 2b below.

- 2) Shrubs – Predominately 36 inches high, covering at least 60 percent of the PNA.
  - 3) Living Groundcovers – Covering at least 60 percent of the PNA.
- f. Minimum Supplemental Tree and Vegetation Standards - If the subject property contains insufficient existing vegetation pursuant to subsection (4)(e) of this section, or if the Planning Official determines it is not feasible to retain an existing vegetation area, a PNA shall be restored or established in a location approved by the Planning Official. The applicant shall provide at a minimum:
- 1) Native Plants - Trees, shrubs and groundcovers selected from the Kirkland Native Plant List, or other native species approved by the Planning Official shall be used to supplement vegetation in the PNA.
  - 2) Trees –The minimum size for a supplemental tree worth one tree credit in the PNA shall be at least six (6) feet in height for a conifer and at least two inches in caliper (DBH) for deciduous or broad-leaf evergreen trees, measured from existing grade. Native conifer tree species are preferred over deciduous trees in the PNA. Supplemental trees shall be planted in such locations in the PNA and in such numbers as to provide assurance that the tree canopy over the PNA shall be 100% within 20 years following establishment of the PNA.
  - 3) Shrubs – Planted to attain coverage of at least 80 percent of the area within two years, and at the time of planting be between 2- and 5-gallon pots or balled and burlapped equivalents.
  - 4) Living Groundcovers – Planted from either 4-inch pot with 12-inch spacing or 1-gallon pot with 18-inch spacing to cover within two years 80 percent of the naturalized area.
  - 5) Soil Specifications – Soils in supplemental vegetation areas shall be amended to comply with City of Kirkland Public Works Pre-Approved Plan CK-E.12 standard for planting beds.
  - 6) Mulch – Mulch in supplemental vegetation areas shall comply with KZC 95.50.
  - 7) Prohibited Plants – Invasive weeds, noxious plants and trees listed on the Kirkland Prohibited Plant List shall be removed within the PNA in a manner that will not harm trees and vegetation that are to be retained.
2. Non-PNA Portion of Property. Total site alteration, including impervious surfaces and other alterations, shall not exceed 75 percent of the total lot area. In addition to the PNA and the area allowed for buildings and other impervious surfaces under section (4), up to 50 percent of the total lot area may be used for garden, lawn or landscaping, provided:
- a. All High Retention Value Trees, as defined in Chapter 95 KZC, shall be retained in the garden, lawn or landscaping portion of property. In order to retain Landmark Trees, the Planning Official shall have authority to make adjustments to the location of building footprints, adjustments to the location of driveways and access ways, or adjustments to the location of walkways, easements or utilities. The Planning Official and the applicant shall work in good faith to find reasonable solutions.
  - a-b. Existing and supplemental trees combined shall meet a minimum tree density of 50 tree credits per acre in the Non-PNA portion of property, calculated as described in KZC 95.33. The area limits set forth in this subsection are to be measured at grade level; the area of allowable garden, lawn or landscaping may intrude into the drip line of a significant tree required to be retained under this subsection if it is demonstrated not to cause root damage or otherwise imperil the tree’s health; and
  - b-c. If development on the lot is to be served by an on-site sewage disposal system, any areas required by the Department of Public Health to be set aside for on-site sewage disposal systems shall be contained as much as possible within the portion of the lot altered for garden, lawn or landscaping as provided by this subsection. If elements of the on-site sewage disposal system must be installed outside the landscaped area, the elements must be installed so as not to damage any significant trees required to be retained under

Commented [SM5]: See also comment on KZC 95.51

subsection (3)(a) of this section, and any plants that are damaged must be replaced with similar native plants.

e-d. Soils on all proposed projects that are subject to clearing and grading that have not been covered by impervious surface, incorporated into a drainage facility or engineered as structural fill or slope shall, at project completion, meet soil amendment requirements per Pre-Approved Plan CK-E.12 within the clearing limits, i.e. in all disturbed areas. In the HPO, this will include all areas where alteration of soil characteristics has occurred.

3. Critical Areas, Surface Water Development Review. When review under Chapter 85 KZC (Critical Areas: Geologically Hazardous Areas) or Chapter 90 KZC (Critical Areas: Wetlands, Streams, Minor Lakes, Fish and Wildlife Habitat Conservation Areas and Frequently Flooded Areas) or the City of Kirkland’s Surface Water Design Manual is required, the review shall assume the maximum development permitted by this Chapter will occur on the subject property, and the threshold of approval shall require a demonstration of no significant adverse impact on properties located downhill or downstream from the proposed development.
4. Maximum Lot Coverage. Total lot coverage of impervious surfaces shall be limited within every building lot as follows:
  - a. On lots up to 6,500 square feet in size, 2,600 square feet;
  - b. On lots 6,501 to 9,000 square feet in size, 2,600 square feet plus 28 percent of the lot area over 6,500 square feet;
  - c. On lots over 9,000 square feet in size, 3,300 square feet plus 10 percent of the lot area over 9,000 square feet;
  - d. On a lot already developed, cleared or otherwise altered up to or in excess of the limits set forth above prior to July 6, 1999, new impervious surfaces shall be limited to five (5) percent of the area of the lot, not to exceed 750 square feet; and
  - e. For purposes of computing the allowable lot coverage within each lot, private streets, joint-use driveways or other impervious-surfaced access facilities required for vehicular access to a lot in easements or within flag lots shall be excluded from calculations.

**Maximum Lot Coverage Summary Table:**

Lot Size	Maximum Lot Coverage
Less than 6,500 sq. ft.	2,600 sq. ft.
6,501 sq. ft. to 9,000 sq. ft.	2,600 sq. ft. plus 28% of the lot area over 6,500 sq. ft.
9,001 sq. ft. or greater	3,300 sq. ft. plus 10% of the lot area over 9,000 sq. ft.
Developed, cleared or altered lots	New impervious limited to 5% of the total lot area, but not to exceed 750 sq. ft.

- f. For development activity occurring after July 6, 1999, upon written request from the applicant, the Planning Director may allow up to a 10 percent increase in impervious surface on individual lots over the limits set forth above, provided such increase is the minimum necessary to allow reasonable use of the

property and meets all other applicable decision criteria for a variance as provided in Chapter 120 KZC, and one or more of the following circumstances applies:

- 1) Development of a lot will require a driveway 60 feet or longer from the lot boundary to the proposed dwelling unit;
- 2) On-site flow control facilities are required by the Public Works Department;
- 3) The requested increase will allow placement of new development on the site in such a way as to allow preservation of one or more additional significant trees, as defined in Chapter 95 KZC, that would otherwise be cleared; or
- 4) The requested increase is necessary to provide additional parking, access ramp or other facilities needed to make a dwelling accessible for a mobility-impaired resident.

(Ord. 4437 § 1, 2014; Ord. 4196 § 1, 2009)

5. Subdivisions, Short Subdivisions and Land Surface Modifications. The following requirements shall apply to new development or redevelopment, 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: Subdivisions, and short subdivisions; and land surface modification permits associated with the development of more than one lot ~~shall be subject to the following requirements:~~
  - a. Applications shall include a comprehensive review of Tree Retention Plan as outlined in KZC 95.30, including the location of the required PNA. Phased review of Tree Retention Plans as described in KZC 95.30(6)(a) is not permitted within the HPO zone;
  - b. The applicant may propose or the City may require alterations to the proposed subdivision, short subdivision, or LSM in order to ensure the best tree retention and location for the PNA. Such alterations include 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 per Chapter 95.32;
  - c. New public or private road improvements shall be the minimum necessary to serve the development on the site in accordance with Chapter 110 KZC. The City shall consider granting modifications to the road standards to further minimize tree removal, site disturbance, and consistent with pedestrian and traffic safety considerations, and the other purposes of the road standards;
  - d. Impervious surfaces and other alterations within each lot shall be limited as provided in subsections (2), (3) and (4) of this Section;
  - e. For larger PNAs, the City ~~may~~shall require permanent signage to be installed along the perimeter of the PNA designating the area as a PNA prior to recording. Signage shall meet the administrative standards of the Planning and Building Department in regard to design, number and location. The signs must be maintained and remain in perpetuity; and
  - f. The proposed PNA shall generally be established within a separate tract. The approved PNA shall be shown on the face of the plat prior to recording and designate who is responsible for maintaining the PNA. in accordance with KZC 7020.8. The designation shall specify that the owners (and their successors, transferees and assigns) of parcels shown in the subdivision plat or short plat shall bear such maintenance responsibility jointly and severally, unless the City determines that a different allocation of responsibilities will enhance long-term maintenance of the PNA.
6. Tree Retention and Landscape Plan Required.
  - a. The applicant shall submit a Tree Retention Plan required under KZC 95.30. In addition, it shall include the existing conditions and general locations of all shrubs and groundcover on the subject property.

**Commented [SM6]:** This amendment has been added to make clear that the obligation burdens/runs with the land in perpetuity and is not an obligation that is personal to the original owner of a lot in the subdivision. How will owners learn that they have responsibility for maintaining their subdivision's PNA?

b. In addition to the Tree Retention Plan required pursuant to KZC 95.30, permit application materials shall shall include a landscape plan prepared by a landscape architect licensed in Washington State that clearly depicts the quantity, location, species, and size of supplemental plant materials proposed to comply with the with the tree density and vegetation requirements of this section; for the PNA and Non-PNA portions of the subject property. The landscape architect shall indicate on the plan that based on the size, quantity, spacing and species of the existing and supplemental trees, a minimum 50% tree canopy cover in the Non-PNA area and 100% tree canopy cover in the PNA area portions of the lot will be achieved in twenty years' time. Plants installed in the PNA shall be integrated with existing native vegetation and planted in a naturalistic pattern per the standards in Chapter 83.400 KZC. The City shall provide a list of tree species where supplemental trees are required to meet minimum tree density credits outside the PNA. The Planning Official shall review and approve the landscape plan.

**Commented [SM7]:** FHNA notes that this language was proposed by the Planning Department staff in the draft of code amendments submitted to the Commission on April 20. FHNA supports this language.

7. Site Inspections. The Planning and Building Department shall conduct site inspections prior to approving any site alteration or development activity as follows:

- a. Prior to altering the site, the applicant shall clearly delineate the proposed PNA and the area of the lot proposed to be altered and built on with 4-foot high stakes and high-visibility tape or other conspicuous and durable means, and shall depict this area on all site plans included in the permit application;
- b. Prior to approving any short subdivision, subdivision, building or land surface modification permit on any parcel, the Planning Official shall inspect the subject property to verify the existing conditions, tree and vegetation cover, and any previous site alteration or building on the site;

c. Prior to permit issuance, the applicant shall install tree and soil protective fencing per KZC 95.34, subject to Planning Official inspection. ~~The~~In addition to requirements imposed by KZC 95.34, the protective fencing shall be staked to the ground, shall remain in the approved location for the duration of development activities, including required soil amendments; ~~and, and shall bear signage stating that the fence may not be moved during development activities;~~

**Commented [SM8]:** Given numerous cases of “fence creep” noted in Finn Hill, FHNA recommends more specific language the requires fencing to fixed in place.

e.d. ~~Prior to grading, other land surface modifications and the removal of significant trees, the applicant shall notify the City of the scheduled dates for such activity and the City shall have the right to inspect the activity at any time to ensure compliance with the requirements of Chapters 70 and 95 KZC and any other applicable provisions of the zoning code; and~~

**Commented [SM9]:** Again, the intent here is to discourage the occurrence of violations, as opposed to penalizing them after the fact.

f. ~~Prior to Planning Official final inspection of any land surface modification or building permit, or recording of any short plat or subdivision, all a landscape architect licensed by the State of Washington shall inspect the landscaping within the PNA must be installed and the applicant shall provide a final submit an as-built landscape plan showing and photo documentation verifying to the Planning Official that all vegetation required to be planted or preserved; as indicated on the approved landscape plan was installed.~~

**Commented [SM10]:** FHNA notes that this language was proposed by the Planning Department staff in the draft of code amendments submitted to the Commission on April 20. FHNA supports this language.

8. Tree and Landscape Maintenance Requirements

In general, forested hydrological conditions, soil stability and the duff layer shall be maintained on properties in the HPO as follows:

- a. Protected Natural Area(s) – PNA(s) shall be retained in perpetuity.
  - 1) For subdivisions, short subdivisions and LSMs associated with more than one lot, PNAs shall be set aside in a tract. In other developments, a recorded protected easement is required. The approved PNA shall be shown in a form approved by the City Attorney or other legal document recorded with and on the face of the plat with a designation of who is responsible for maintaining the PNA. Land survey information shall be provided for this purpose in a format approved by the Planning Official.

- 2) The applicant, landowner, or successors in interest shall be responsible for the ongoing maintenance of vegetation required under Section 70.20 of this Chapter and KZC 95. For short plats and subdivisions containing larger consolidated PNAs where extensive supplemental planting is required, the ~~City may require each applicant shall furnish~~ a financial security under Chapter 175 KZC to ensure compliance with the ~~monitoring and~~ maintenance of trees and vegetation planted in the PNA ~~and the City shall inspect such PNA for compliance [annually] for a period of five(5) years following the establishment of the PNA.~~
  - 3) Plants that die must be replaced in kind or with similar plants contained on the Native Plant List, or other native species approved by the Planning Official.
  - 4) Construction of primitive pedestrian-only trails may occur if they can be designed with minimal environmental impact. In no case shall trails be constructed of concrete, asphalt, or other impervious surfaces.
- b. Non-PNA Portions of the lot which are not geologically hazardous areas or do not contain wetlands, streams, minor lakes, fish and wildlife habitat conservation areas and frequently flooded areas, or critical areas governed by Chapter 85 or 90 KZC, shall be maintained per ~~Chapter KZC 70.15.2 KZC and 90.51.~~
9. Conformance with Other Provisions. Conformance with this Chapter shall not relieve an applicant from conforming to any other applicable provisions of the Zoning Code, Subdivision Ordinance, or Shoreline Master Program.

(Ord. 4619 § 1, 2017; Ord. 4551 § 4, 2017; Ord. 4491 §§ 3, 11, 2015; Ord. 4437 § 1, 2014; Ord. 4196 § 1, 2009)

**Commented [SM11]:** Note: the bonding and inspection requirements would apply only to larger PNAs where extensive replanting is required.

**KZC Chapter 95 – [DRAFT CODE AMENDMENTS WITH MARKUPS] TREE MANAGEMENT AND REQUIRED LANDSCAPING 4/13/18**

**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 that~~ is equal to the greater of the dripline of the tree or one (1) foot radius 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.
- x. Inner Critical Root Zone (ICRZ) –An area encircling a tree that is half the distance of the Critical Root Zone, or the inner half of the Critical Root Zone radius. Applicable only in the HPO only.
- xx. Landmark tree – A tree that a qualified tree professional appointed by the City has determined contributes to the character of the community because of its size, age and condition and: (a) is a species shown in the City’s list of native tree species (b) has a diameter breast height of [xx] inches or more; and (c) is assessed to be healthy and likely to survive for at least 10 more years assuming proper care.
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. All high retention value trees in the Holmes Point Overlay area shall be retained as specified in KZC 70.20. Tree retention efforts shall also 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

**Commented [SM1]:** Adapted from Medina tree ordinance. Other local jurisdictions’ tree ordinances contain similar definitions.

**Commented [SM2]:** It is unclear how this sentence, which appears in Chapter 95 currently, relates to the preceding sentence. Does it limit that types of viable trees in side yards that are entitled to protection? Does it mean that the trees listed below are also entitled to protection even though they may not be located in side yards? If so, are these trees also high retention value trees for the purposes of both Chapter 95 and Chapter 70?

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 the grove;

- 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 and, unless removal is required to rectify an interruption of service that has occurred or that is imminent, only after City approval of an application by the utility to remove a tree in which the utility demonstrates that such removal is necessary to maintain service to the public. 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.

**Commented [SM3]:** The intent of this additional language is to make clear that removals proposed by a utility to pre-empt an outage in the future should be subject to a permit application in which the utility demonstrates that pruning will not be adequate to avoid the outage. This language can be limited to removals in the HPO area.

**Commented [SM4]:** Where can these plans be reviewed?

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.
- (x) Holmes Point Overlay zone. Properties located within the Holmes Point Overlay area are subject to additional tree removal and replacement standards. See Chapter 70 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) 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 and for sites in the Holmes Point Overlay area as required by KZC 70.15. 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 for any reason, including a likelihood that they will no longer be windfirm.
- e) The reforestation plan ensures perpetuity of the wooded areas with a tree canopy over the relevant property of at least 50% within 20 years following the approval of the Forest Management Plan. The size of planted trees for reforestation shall be a minimum of three (3) six (6) 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)

**95.30 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

**Commented [SM5]:** This point is implied but we recommend that it be made explicit.

**Commented [SM6]:** 6’ is specified to conform to the requirements of other revegetation provisions in the code.

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, including tree removal allowances, development review requirements, Protected Natural Area designation, soil amendment requirements and the use of Incentives and Variations to development standards to retain High Retention Value trees.

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) and, for sites located in the HPO, any planned incursions within the CRZ of any significant tree that the plan shows as being retained through completion of the proposed development;
- 3) Size (DBH);
- 4) Proposed tree status (trees to be removed or retained);

**Commented [SM7]:** We have recommended at several points in this section that the developer's arborist and the City's arborists identify all anticipated incursions into a significant tree's critical root zone and agree on whether those incursions will adversely affect the viability of the tree and whether aftercare procedures are required to preserve the tree's health, assuming the tree is to be 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). For properties located in the HPO, the Critical Root Zones of significant trees Inner Critical Root Zone must be shown on the site plan and any case where an incursion into the Inner Critical Root Zone of a significant tree is proposed, the site plan must show the Inner Critical Root Zone of such tree;
  - 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. In the HPO, include off-site trees that may be potentially impacted by site disturbances;
  - 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**

<b>Development Activity Required Components</b>	<b>Minor <sup>(1)(3)</sup> – Single-Family, or two attached, detached, or stacked dwelling units,</b>	<b>Major <sup>(2)(3)</sup> Single-Family, or two attached, detached, or stacked dwelling units,</b>	<b>Multifamily, Commercial, any other use other than residential, and related</b>	<b>Short Plat, Subdivisions, cottages, carriage units, two/three- unit homes, and related demolition and land surface</b>
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	and related demolition and land surface modification applications	and related demolition and land surface modification applications	demolition and land surface modification applications	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				
Indicate the <del>inner</del> Critical Root Zone of significant trees on properties in the HPO per <del>95.10.xx30.4(b)5</del>	X	X	X	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
All significant trees on neighboring properties per 95.30.6(a)3	X	X	X	X
<b>TREE RETENTION STANDARDS</b>				
Applicant is encouraged to retain viable trees	X <sup>(4)</sup>			
All High Retention Value trees shall be retained in the HPO.	X <sup>(6)</sup>	X <sup>(6)</sup>	X	X <sup>(6)</sup>
Notification/authorization for significant trees on neighboring properties in the HPO.	X	X	X	X
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>

**Commented [SM8]:** Shouldn't an HPO tree plan include such information in all cases?

**Commented [SM9]:** It is unclear to FHNA why a tree professional would not prepare a plan for any development HPO project (single family, multi-lot, etc) that covers the tree inventory and site plan factors listed above and in this section of the table.

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(7)</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	

Notes:

- (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) Preservation and maintenance agreements in the Holmes Point Overlay zone apply per KZC 70. Public infrastructure projects constructed by a public agency are exempt from this retention standard, but subject to all other applicable retention standards.

(7) Development of properties with the Holmes Point Overlay zone is governed by Chapter 70 KZC and shall ensure that a tree canopy on the property to be developed shall be at least 30% at the time of completion of development.

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, tree retention for subdivision or short plat applications and land surface modification applications associated with the development of more than one lot shall be determined through an integrated process as outlined in subsections (2) through (5) of this section. If any disturbance is proposed within the Critical Root Zone of significant trees on a lot to be developed, the Tree Retention Plan shall indicate either that such tree will be removed or that it will be retained based on the qualified tree.

**Commented [SM10]:** As noted in FHNA comments to Chapter 70, a definition of tree canopy should be included in the KZC. The Lake Forest Park tree ordinance may be a good model for such a definition.

professional's conclusion that that tree will be viable following development, which conclusion shall be set forth in the plan along with a description of the aftercare protocols deemed appropriate by the qualified tree professional. The Tree Retention Plan shall not be approved by the City unless a qualified tree professional appointed by the City concludes in writing that each proposed incursion will not render the tree non-viable and further specifies the appropriate aftercare protocol, if any, for the affected tree. Performance of such aftercare protocols will be specified as conditions to the City's approval of the plan. In the event that a disturbance is proposed within the Critical Root Zone of significant trees on a neighboring property, the applicant shall provide evidence that the owner of said tree(s) has been notified in writing of the potential impact. If any disturbance is proposed within the Inner Critical Root Zone of significant trees on a neighboring property, the applicant shall provide written authorization from the property owner of the impacted tree(s) for the encroachment. The Planning Official may waive this requirement if the applicant can demonstrate, through non-injurious methods such as air root excavations, that there are no roots within the Critical Root Zone and the City's qualified tree professional concurs in such findings.

- 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;

b) In the case of development within the Holmes Point Overlay area, the modified plan complies with the requirements of Chapter 70 KZC and this chapter; 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 failure to seek modification of the Tree Retention Plan prior to removal of trees in violation of the plan was due to a need to remove an imminent threat to safety or property not created by the developer;

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 from the public 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)

**Commented [SM11]:** Shouldn't these standards for tree protection and notification of neighbors apply to development activity on single lots in the HPO, as opposed to just multi-lot projects?

**Commented [SM12]:** What is the standard for such approval?

**Commented [SM13]:** Confirm that neighbors will receive this notice.

### 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 land 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 and, for properties in the HPO, landmark trees. Subject to applicable provisions of Chapter 70 KZC, 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.

6. Additional variations in the Holmes Point Overlay zone for short plats, subdivisions, and land surface modification applications associated with the development of more than one lot, The Planning Director may approve variations to maximum Floor Area Ratio and Lot Coverage requirements in order to facilitate consolidation of the PNA within a separate tract pursuant to KZC 70. If the PNA is placed in a tract and the creation of the tract results in lot sizes reduced below 10,890 square feet in the RSA 4 zone or 7,260 square feet in the RSA 6 zone, then the maximum Floor Area Ratio and Lot Coverage requirements may be adjusted proportionate to the lot size reduction(s).

(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.

Protected Natural Areas (PNA) located on properties Properties within the HPO zone are subject to tree density credits and tree canopy percentage requirements set forth in Chapter 70 KZC and in this chapter.

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-

**Commented [SM14]:** Means what?

**Commented [SM15]:** These revisions are designed to make clear that high retention value trees must be retained in the HPO and that HPO provisions also authorize the Planning Official to require site alterations for the preservation of landmark trees that may go beyond "minor" footprint adjustments. See also FHNA comments to KZC 70.20.2a.

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.
- c. In the HPO, no tree shall receive more than 11 tree credits regardless of DBH.

**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) six (6)~~ 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)

**Commented [SM16]:** Revised to conform to other replacement tree requirements. See 70.20.f2.

[Sections 95.34-95.50 intentionally omitted from this draft, for the sake of brevity?]

#### 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. ~~Notwithstanding any other provision of this Chapter, trees and other vegetation in designated Protected Natural Areas in the Holmes Point Overlay Zone are to be protected in perpetuity pursuant to KZC 70.20.8(a). Significant trees in the remainder of the lot shall be maintained pursuant to KZC 70.20.8(b) and KZC 95.23.~~
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)

**Commented [SM17]:** The cited sections don't pertain to maintenance but to tree removal. It is very important that maintenance of non-PNA areas that are covered by a developer's revegetation tree plan and that homeowners' obligations to maintain replacement trees are governed by maintenance obligations of at least 5 years.

**KIRKLAND MUNICIPAL CODE [PROPOSED AMENDMENTS] 4/13/18**

**Title 1.12.100 Special provisions relating to enforcement of tree regulations in Chapter 95 KZC.**

(a) General Requirements. This section applies to all trees in the city, including private property trees, public property trees and street trees. Enforcement shall be conducted in accordance with procedures set forth in this chapter. Special enforcement provisions related to tree retention and restoration are set forth in this section.

(b) Authority. It shall be the duty of the applicable department director to administer the provisions of this section.

(c) Civil Penalty Fines for Tree Removal.

(1) It is unlawful to remove or damage trees in violation of the tree regulations in Chapter 95 KZC.

(2) In addition to the ~~parties or persons definitions established defined~~ in Title 1.12.020 KMC, any person who aids or abets in the violation shall be considered to have committed a violation for purposes of fines.

**Commented [SM1]:** Revised language because the intent of the first clause wasn't clear as originally worded

(3) Types of violations. **Moved here from Table 1.12.100** Violations of this code include, but are not limited to, the following:

(A) Removal ~~of~~ or damage to tree(s), prior to final tree retention plan approval, or issuance of a city tree removal permit;

(B) Removal ~~of~~ or damage to tree(s) ~~that are shown, or would be shown, to be retained that were not shown as being subject to removal~~ on an approved tree retention plan or any other violation of an approved tree retention plan;

**Commented [SM2]:** Revised language to cover situations in which a tree plan is deficient in listing all trees subject to removal

(C) Removal ~~of~~ or damage to tree(s) without applying for or obtaining a required city tree removal permit; or

(D) Removal ~~of~~ or damage to trees in violation of the terms and conditions of an issued City permit, including any and all violations of American National Standards Institute (ANSI) A300 Pruning Standards.

(4) Civil penalty fines shall be assessed in accordance with Table 1.12.100, based on the Diameter at Breast Height (DBH) of the unlawfully removed or damaged tree trunk. If the DBH of an unlawfully removed or damaged tree cannot be established, the diameter of the remaining stump top shall be used in lieu of DBH. In cases where the stump has been removed but where other evidence indicates a pre-existing tree, the City shall assess a minimum \$10,000 civil penalty fine per unlawfully removed tree. Fines may be assessed against the responsible party in addition to the cost(s) of restoration. The applicable department director may elect not to seek fines if he or she determines that the circumstances do not warrant imposition of fines in addition to the cost(s) of restoration ~~and provides a written explanation for such determination~~.

Unlawfully Removed or Damaged Tree DBH or Stump Diameter	Fines per Tree
Larger than 6 and up to 8 inches	\$1,000
Larger than 8 and up to 12 inches	\$2,000
Larger than 12 and up to 16 inches	\$4,000
Larger than 16 and up to 20 inches	\$8,000

Unlawfully Removed or Damaged Tree DBH or Stump Diameter	Fines per Tree
Larger than 20 and up to 24 inches	\$12,000
Larger than 24 and up to 28 inches	\$16,000
Larger than 28 inches	\$20,000
Tree stump has been eliminated	\$10,000

(5) The fine per-tree penalty for repeat violations shall be determined by multiplying the fine per tree amount in Table 1.12.100 by the number of violations. For example, the fine per-tree amount for second-time violations is multiplied by two, and the fine per-tree amount for third-time violations is multiplied by three, and so on.

(6) Treble Damages. Where violation(s) result in the unlawful removal of or damage to public trees, the City may assess treble damages per RCW 64.12.030.

(d) Tree and Site Restoration.

(1) Restoration Plan. Violators of Chapter 95 KZC or of a permit issued thereunder shall be responsible for restoring unlawfully damaged areas. The goal of the restoration plan shall be a site condition that, to the greatest extent practical, equals the site condition that would have existed in the absence of the violation.

(A) **(Moved from (1) above)** The restoration plan shall depict repairs of any environmental and property damage and restoration of the site.

(B) Tree violations that occur in critical areas and their buffers, on properties within shoreline jurisdiction and within the Holmes Point Overlay zone are subject to the restoration plan requirements per Chapters 90, 85, 83 and 70 KZC, respectively.

(C) **(Moved from (1) above)** Restoration plans shall be approved by the applicable department director. If the violation occurred to public trees, such as trees located in parks or in the right-of-way, the applicable department director may require a violator to pay fees in lieu of restoration per KMC 1.12.100(d)3.

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

(A) The number of trees required to be planted shall be equal to the number of tree credits of illegally removed trees according to Table 95.33.1 KZC or in the case of a restoration plan for property subject to Chapter 75 KZC, the number of trees required to be planted shall equal that necessary to comply with the requirements of that chapter as they apply to the affected property.

(B) The minimum size for a tree planted for restoration shall be a six-foot-tall conifer and/or two-inch caliper deciduous or broadleaf evergreen tree. The City may approve smaller restoration tree sizes at a higher restoration ratio, depending on the size, quality and species of the removed tree.

(C) The restoration plan shall include a maintenance plan and an agreement or security to ensure survival and maintenance of restoration trees for a minimum ~~three~~**five**-year period; ~~provided, if the~~

The Kirkland Municipal Code is current through Ordinance xx, passed (date?)

**Commented [SM3]:** 5 years will better protect new plantings, and a 5 year standard should apply in all cases in light of the fact that the restoration plan mitigates a previous violation of the code.

~~violation was on a site with an approved tree retention plan, the maintenance period shall be a minimum of five years.~~

(3) **(Moved from above)** In the event the violators cannot restore the unlawfully removed or damaged trees, the violators shall pay a fee in lieu of restoration to the City Forestry Account.

(A) Fees in lieu of restoration shall be based on the value of the subject trees, utilizing the most recent version of the Pacific Northwest Chapter International Society of Arboriculture (ISA) "Species Ratings for Landscape Tree Appraisal" unit cost for conifer and/or deciduous tree replacement, multiplied by the number of illegally removed tree credits per Chapter 95.33.1 KZC.

(B) If the diameter at breast height of a removed or damaged tree trunk is unknown, determinations of tree value shall be made per KMC 1.12.100(c)4.

(e) Hearing on Violation, Failure to Restore or Failure to Pay Fines. The city shall enforce this code via issuance of a notice of civil violation to the violator(s) according to the procedures set forth in Chapter 1.12 KMC. Violator(s) may administratively appeal the notice of civil violation, in which case a hearing on the notice of civil violation shall be held in accordance with Title 1.12.050 KMC and the hearing examiner shall determine whether violation(s) occurred and, if so, the hearing examiner may impose any appropriate fine(s) for such violation(s), as well as require restoration or fee(s) in lieu of restoration. (Ord. 4525 § 1, 2016; Ord. 4451 § 7, 2014; Ord. 4280 § 1 (part), 2011)

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#### KIRKLAND MUNICIPAL CODE

##### Title 7.02.260 Suspension or revocation of license—Criteria.

The director may suspend or revoke a business license or permit when the licensee, officer or partner thereof, or another person with a legal interest in the license:

- (1) With actual or constructive knowledge, causes, aids, abets, or conspires with another to cause any person to violate any of the laws of this state or the city which may affect or relate to the licensed business;
- (2) Has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake;
- (3) Is convicted of, forfeits bond upon, or pleads guilty to any offenses related to the operation of the licensed business;
- (4) Makes a misrepresentation or fails to disclose a material fact to the city related to any of the obligations set forth in this chapter;
- (5) Violates any building, life or public safety, fire or health regulation on the premises in which the business is located after receiving warning from the city to refrain from such violations;
- (6) Is in violation of a zoning or building code or other material regulation of the city, including the responsibility to exercise best efforts to help ensure conflicts between short-term renters and neighbors are avoided as set forth in Section [7.02.300\(3\)](#); or
- (7) Is indebted or obligated to the city for past due fees or taxes, excluding special assessments such as LID assessments. (Ord. 4607 § 6, 2017; Ord. 3884 § 2 (part), 2003)

The Kirkland Municipal Code is current through Ordinance xx, passed (date?)



May 22, 2018

Kirkland Planning Commission  
Kirkland City Hall  
123 Fifth Avenue  
Kirkland WA 98033

Re: Code Amendments for Kirkland Zoning Code Chapter 70 (Holmes Point Overlay) and  
Chapter 95 (Tree Management and Required Landscaping) – File CAM18-00080

Dear Commissioners,

Following are comments from the Finn Hill Neighborhood Alliance regarding amendments to the Holmes Point Overlay ordinance. For the most part, we are in agreement with the City staff on the proposed amendments and we are pleased that we were able to resolve several outstanding issues when we met the Planning Department representatives on Monday, May 7, 2018. We continue to appreciate the time that the City staff has dedicated to working with us on HPO amendments.

At this point, we believe that there are four points on which we have been unable to reach full agreement with staff.

Each of these points is presented below. The first is extremely important and is addressed in detail.

**Preservation of existing trees during development activity outside of Protected Natural Areas**

General comment: FHNA and City staff have debated extensively how best to preserve existing trees during the development of properties in the HPO. This is a critical issue to Holmes Point residents because they have seen, time and again, the destruction of mature trees on properties during land clearing activities, leaving hillsides open to erosion and increasing the risk of slides. (See photos in Attachment A.) We have not reached agreement with the staff on how to address

this issue. In this regard, we believe that the proposed amendments to the HPO are unsatisfactory.

The principal purpose of the HPO was to protect existing trees during the development process. The current ordinance says, *without qualification*, that “all significant trees must be retained” on properties in the Holmes Point area. The ordinance has, to FHNA’s knowledge, never been enforced as it was written. Instead, the standard has been interpreted to require something in the nature of preserving trees where it is reasonable or convenient for a developer to do so. As applied, the tree retention standard has been vague, variable, and mostly ineffective.

FHNA proposal: FHNA is not so naïve as to expect that all significant trees will in fact be retained during development. But we do want an objective standard that ensures that a reasonable quantity of mature trees will be protected in the construction process. We have suggested that development should not be permitted to reduce tree canopy to less than 30% over a parcel. This includes the canopy that will be provided in the PNA (covering 25% of the parcel).<sup>1</sup> Our proposal thus requires only a small number of trees on the non-PNA portion of the parcel to be retained. (See our April 24, 2018 letter to the Planning Commission, at page 4, appended as Attachment C.) We are proposing the addition of the following paragraph to the tree retention plan footnotes in Section 95.30:

*(7) Development of a property in the Holmes Point Overlay zone is governed by Chapter 70 and shall ensure that the tree canopy on the property shall not be reduced by development activity below 30% at the time of completion of development.*

The staff has advised us that it will not support any quantitative standard for the retention of existing trees on lots undergoing development. Staff has argued that a minimum retention standard is unnecessary because the Holmes Point area has been downzoned, an IPD regime has been mandated, and because it has proposed language that all High Retention Value Trees shall be retained. The downzone and the implementation of the IDP requirement are significant benefits: the downzone *enables* more trees to be retained and the IDP process requires a developer to *show* at a project’s outset which trees will be felled and which will be retained. However, neither the downzone nor the IDP imposes substantive *requirements* for protecting trees.

The only requirement for the protection of existing trees suggested by staff is the mandate that High Retention value trees be retained. (See staff’s proposed language of Section 70.20.2.a.) This is a very good suggestion. FHNA supports it. But staff has stated that trees will be classified as High Retention Value Trees only if they are located in “required yards and/or required

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<sup>1</sup> When we met with staff on May 7, 2018, we clarified that our proposal seeks to preserve a 30% canopy cover over the entire parcel under development, *including the PNA*. Staff had previously thought that our proposal sought to require a 30% canopy cover over the non-PNA portion of the parcel in addition to whatever canopy cover would be provided in the PNA.

landscape areas”<sup>2</sup>. Thus, as amended by the staff, the HPO would do nothing to protect trees located outside of required setbacks and yards.

It might be argued that the High Retention Value Tree provision suggested by the staff will result in the protection of existing trees to the extent that a property will retain 30% canopy cover through the development process. If so, the language suggested by FHNA will not be problematic. If the High Retention Value Tree language does not result in the preservation of 30% canopy coverage, however, FHNA’s provision will be needed to ensure that a minimum level of canopy coverage is retained.

Finally, the 30% canopy requirement doesn’t impose new burdens in administration of the HPO. The staff has already recommended that a landscape architect certify in each development’s tree plan that a 50% tree canopy will be achieved in 20 years’ time. Requiring the landscape architect to certify as well that the tree canopy will not be reduced below 30% at the completion of development should not add any meaningful burden to the creation of the tree plan. Note that the language proposed by FHNA has been revised (as compared to what FHNA proposed in its April 24 letter to the Planning Commission) so that it does not prohibit development on properties that have less than 30% canopy coverage at the time development begins. The language prohibits a reduction of existing tree canopy to less than 30% only to the extent that the reduction *results from development activity*.

#### **Protection of significant trees whose Critical Root Zones are impacted during development activity**

FHNA has argued that tree retention plans for projects in the HPO should indicate when the Critical Root Zones of significant trees will be impacted by development activities and should also include an analysis by the developer’s arborist showing why such incursions will not adversely affect the viability of those trees.

We are pleased that the staff’s proposed amendment to Section 95.30.4(5) now requires Critical Root Zones (CRZs) to be indicated on the site plan for each project in the Holmes Point area. However, the staff’s revisions don’t require the site plan to indicate whether the arborist has concluded that CRZ incursions will affect the viability of the affected trees. It’s important that this omission be rectified: while it’s good to show CRZs on tree plans, that information is

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<sup>2</sup> The first sentence of the staff’s proposed amendment to Section 70.20.2.a reads more broadly than what the staff may intend: “All High Retention Value Trees, as defined in Chapter 95 KZC, shall be retained in the garden, lawn, and landscaping portion of the property.” This language appears to protect High Retention Value Trees in all such portions of a property, even in gardens, lawns and landscaping areas not mandated by the general zoning for the property (although such areas seemingly must be set aside as garden, lawn or landscaped areas under the HPO – given that the HPO limits the extent of impervious surface on a lot). FHNA notes that Section 95.10.13.a defines a High Retention Value Tree as a viable tree “located within required yards and/or required landscape areas”. FHNA understands that staff intends to apply High Retention Value Tree protection in the HPO only to viable trees in these “required” yards and landscape areas.

essentially meaningless without a conclusion as to whether the trees will survive incursions into those CRZs.

FHNA proposal: Accordingly, FHNA recommends that the staff amendment to 95.30.4(5) be supplemented as follows (with FHNA language shown in red italics):

- (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). For properties located in the HPO, Critical Root Zones<sup>[3]</sup> and Inner Critical Root Zones must be indicated, *and if any disturbance is proposed within such Critical Root Zones, the plan must indicate whether, in the opinion of a qualified tree professional, the affected tree will be viable following such incursion and what aftercare procedures (if any) will be needed for continued viability. The plan will not be approved by the City unless a qualified tree professional appointed by the City concludes in writing that the proposed incursion will not render the tree non-viable and further specifies that the appropriate aftercare procedures (if any) are appropriate and are conditions to the approval of the plan.* If any disturbance is proposed within the Critical Root Zone of significant trees on a neighboring property, the applicant shall provide evidence that the owner of said tree(s) has been notified in writing....

#### **Modification of tree retention plans following the removal of trees previously identified for retention**

Section 95.30.6.3 allows a developer to seek a modification to a tree plan following tree removals that did not comply with the plan. In order to ensure the integrity of tree plans and to dissuade developers from attempting to rectify plan violations after the fact, the standard for granting such modifications in such cases should be high. FHNA has proposed language for a strict modification standard. Without such language in the code, we are concerned that developers could abuse the provision to seek modifications.

FHNA proposal: We therefore recommend that the following subparagraph be added to Section 95.30.6.3:

- (b) The failure to seek modification of the Tree Retention Plan prior to removal of trees in violation of the plan was due to a need to eliminate an imminent threat to safety or property not created by the applicant;*

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<sup>3</sup> A conforming change should be made to the tree retention plan table in Section 95.30.5: the new language that reads "Indicate Inner Critical Root Zones of significant trees on properties in the HPO per 95.10.xx" should be revised as follows: "Indicate Critical Root Zones of significant trees on properties in the HPO per 95.10.2."

### **Maintenance of replacement trees outside Protected Natural Areas**

The staff's proposed amendment to Section 70.20.8(b) specifies maintenance requirements for non-PNA replacement trees by referring to Section 70.15.2, which describes the terms under which significant trees outside the PNA may be *removed*. The staff's proposed amendment to Section 95.51.4, which specifies maintenance requirements for trees in the Holmes Point area, states that trees outside of PNAs must be maintained pursuant to Sections 70.20.8(b) and 95.23. As noted above, Section 70.20.8(b) refers to Section 70.15.2 – a tree removal section – and Section 95.23 likewise deals with tree removals. There is no clear statement in either Chapter 70 or Chapter 95 setting forth the obligations to *maintain* non-PNA replacement trees.

FHNA proposal: We recommend the addition of appropriate cross-references to Sections 95.51.1-2, which state that required trees must be replaced in kind and maintained for 5 years. Specifically, Section 70.20.8(b) should read:

- b. Non-PNA portions of the lot...shall be maintained per Chapter 70.15.2 KZC *and Chapter 95.51.1-2 KZC.*

And Section 95.51.4 should be revised as follows:

4. Maintenance in Holmes Point Overlay Zone. Trees and vegetation in designated Protected Natural Areas in the Holmes Point Overlay Zone are to be protected in perpetuity pursuant to KZC 70.20.8(a). Significant trees in the remainder of the lot shall be maintained pursuant to KZC 70.20.8(b), KZC 95.23 and *95.51.1-2.*

### **Requirement the tree retention plans include a landscape architect's determination that a 50% tree canopy will be achieved in twenty years**

The staff has recommended that tree retention plans in the Holmes Point Overlay zone include a determination by the developer's landscape architect that the project's tree canopy will be 50% within twenty year's following completion of development activity. As we previously advised the Planning Commission in our April 24 letter, FHNA strongly supports this requirement.

We have asked the City staff whether the landscape architect's conclusion can be based on an assumption that 50 tree credits per acre (the required minimum tree density on non-PNA portions of HPO lots) would equal 50% canopy coverage in twenty years' time. The staff has advised us that this will not be the case and that other, more reliable data regarding canopy coverage will have to be used. This is reassuring and important because FHNA is convinced that tree credits – which reflect trunk diameter – do not equate to tree crowns in a straightforward fashion and therefore cannot be used to predict tree canopy coverage without sophisticated, species-specific refinements. The suitability of tree credits as a proxy for canopy coverage is particularly fraught when applied to native conifers. See Attachment B for an analysis of the unreliability of tree credits as a predictor of canopy coverage.

Thank you for considering these observations on a regulation that is very important to the Holmes Point community.

Respectfully submitted,

FINN HILL NEIGHBORHOOD ALLIANCE

A handwritten signature in blue ink, appearing to read "Scott Morris".

Scott Morris, President

Attachments: Development photos, tree credit/canopy analysis, FHNA letter of April 24 (with attached proposed revisions to Chapters 70 and 95)

Cc: Janice Coogan  
Jeremy McMahan  
Adam Weinstein  
Eric Shields  
Kirkland City Council  
FHNA Board of Directors  
FHNA Ad Hoc Committee on HPO

Attachment A  
Photos showing recent development activity in the Holmes Point Area

Note that although trees have been retained on the perimeters of the properties to be developed (where PNAs are located), the interiors of the properties have been cleared of all trees.

Development at 73<sup>rd</sup> Place NE between NE 118<sup>th</sup> Place and NE 120<sup>th</sup> Street



Development at 68<sup>th</sup> Avenue NE – NE 124<sup>th</sup> Street (north of O.O. Denny Park)



Attachment B

FHNA analysis of the relation between tree credits for deciduous and coniferous trees and tree canopy percentages

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Memorandum  
May 2018

To: Kirkland Planning Commission

From: Finn Hill Neighborhood Alliance (FHNA)

Subject: Kirkland's Tree Credit Requirements Don't Work for Native Conifers

This document summarizes recent calculations to evaluate numerically whether current and proposed tree credit requirements in KZC 95.33 are adequate to meet Kirkland's canopy coverage goals for native conifers in the Holmes Point Overlay (HPO) area. The conclusion is that they are not. The reason they are not is that native conifer growth rates are much slower than those for the non-native deciduous species Kirkland has used to justify the current tree credit requirements.

In a white paper prepared by Staff in February 2018, entitled *Holmes Point Overlay Code Revision, Tree Density Credits & Canopy Cover*, an example calculation with the non-native deciduous species Red Maple was used to assert that Kirkland's current tree credit requirements are adequate to meet the current citywide canopy coverage requirements of 40% (although the HPO aims to achieve a higher canopy goal). Specifically, using Red Maple for supplemental plantings the white paper calculated canopy coverages 20 years after planting of 100% coverage in the Protected Natural Area (PNA) and 21% coverage in the remainder of a one-acre lot (non-PNA), yielding 42% coverage on an idealized 1-acre lot. (As a side note, there was apparently an arithmetic error in this original calculation, with the correct estimates being 85% in the PNA and 17% in the non-PNA, for an overall lot coverage of 33%, not 42%). The key issue is that when these exact same calculations are made using 20-yr growth rates for native conifer species, the projected canopy coverages fall far short of current or proposed HPO canopy goals, as illustrated in Table 1 below. Note that the conifer growth rates and 20-yr canopy areas used in Table 1 are based on large, long-term U.S. Forest Service statistical databases, specific to western Washington.

*[See table on next page.]*

**Table 1: 20-yr Canopy Areas for Various Tree Species and Credits Req'd for Kirkland's Goals**

Common Name	Spread at planting (ft)	20 yr canopy area, avg (sq ft)*	Non-PNA					PNA
			20 yr non-PNA canopy cover @ 30 credits/acre	20 yr non-PNA canopy cover @ 50 credits/acre	Tree credits/acre req'd for 21% canopy at 20 yrs	Tree credits/acre req'd for 33% canopy at 20 yrs	Tree credits/acre req'd for 50% canopy at 20 yrs	Tree credits/acre req'd for 100% canopy at 20 yrs
Douglas fir	3-4	225	15.5%	25.8%	41	64	97	194
WR Cedar	2-3	127	8.7%	14.6%	72	113	171	343
Hemlock	3-5	148	10.2%	17.0%	62	97	147	294
Red Maple	5-7	245	16.9%	28.1%	37	59	89	178

\*Native conifer growth rates and canopy area at 20 yrs estimated by U.S Forest Service. See <https://www.fs.fed.us/fvs/documents/guides.shtml>, Westside Cascades variant

As an example, note that 97 credits per acre (vs the proposed 50 or the current 30) would be required to achieve Kirkland's proposed 50% canopy cover with Douglas fir in the non-PNA. Moreover, with Douglas fir 194 credits per acre (vs the current 150) would be required to achieve the required 100% canopy in the PNA. The shortfalls are worse for the other two native conifer species in the table. Red Maple is a poor proxy for the predominantly native conifer forests common today in the HPO area, but even Red Maple cannot meet the proposed canopy goals.

Table 2 shows the percent canopy coverage in the non-PNA area required to achieve various overall lot canopy percentages, assuming the required 100% canopy percentage in the PNA. It is clear from Table 2 and the examples in Table 1 that for all conifer species except Douglas fir, the citywide canopy goal of 40% cannot be met, and for proposed total canopy goals of 50% and higher not even the proposed increase to 50 tree credits/acre in the PNA will cause the goals to be met.

**Table 2: Canopy Coverage Required in Non-PNA for Various Total Lot Canopy Goals**

Total Lot Canopy goal (%)	40%	50%	63%
Assumed PNA Canopy (%)	100%	100%	100%
Required non-PNA Canopy (%)	20%	33%	50%

Several conclusions are clear from the above examples:

- The current tree credit requirements for post-development supplemental plantings do not meet Kirkland's current goals for 20 yr canopy area, as stated in KZC Chapter 95.
- The shortfalls in 20-yr canopy area are especially glaring when the native conifer species common in the HPO area and the Finn Hill neighborhood in general are included in the calculations.
- Staff's proposed increase to tree credit requirements (50 credits/acre in non-PNA area) is too low to ensure that Kirkland's canopy goals are met for native conifer species.

- Staff's proposal to require a Landscape Architect (LA) to certify that a developer's supplemental tree plantings will achieve a canopy coverage of 50% should be amended to require the LA to use well-validated canopy projections such as those in Table 1, rather than the current or proposed tree credit requirements.
- The use of the non-native deciduous species Red Maple in calculations to assert that Kirkland's tree credit system is working is misleading at best. In the future, especially for the HPO update, native conifer species should be used in projections of 20 yr canopy areas for any supplemental plantings.

The tree credit system favored by Staff is arcane and difficult to apply when the metric for success is canopy coverage area. A plausible alternative would be to change Kirkland's supplemental tree planting requirements to reference canopy area goals rather than tree credits. If, however, the tree credit system must be used, more realistic canopy area projections should be used to set the tree credit requirements for supplemental plantings. Most importantly, projected canopy areas for native conifer species currently found in the HPO area, and overwhelmingly preferred by HPO residents, must be used to set realistic tree credit requirements.

Attachment C

FHNA letter of April 24 to Kirkland Planning Commission  
(appended following this cover page)



April 24, 2018

Kirkland Planning Commission  
Kirkland City Hall  
123 Fifth Avenue  
Kirkland WA 98033

Re: Zoning Code Amendments to Holmes Point Overlay Chapter 70 Kirkland Zoning Code (KZC) and Tree Management and Required Landscaping Chapter 95 KZC, File CAM 18-00080

Dear Commissioners,

On behalf of the board of the Finn Hill Neighborhood Alliance (FHNA), I am writing in regard to the Planning Department's recommendations to revise the Holmes Point Overlay (HPO) ordinance and to make conforming amendments to the city's general tree ordinance. FHNA is extremely appreciative of the time and attention that you and, in particular, the City's planners have devoted to updating the HPO ordinance.

For the most part, we feel that the HPO will be improved considerably if the changes recommended by the staff are codified. However, as we outline below, there are several points on which we have not reached agreement with staff; these relate primarily to provisions aimed at protecting mature trees during the development process. There are also several code language drafting issues that we believe should be discussed before amendments are sent forward to the Council. We therefore request that you defer acting on the staff recommendations until your May 24 meeting. By that time, we hope that we will have had a final opportunity to resolve points on which we still differ with the staff and to refine code language as appropriate.

#### Background

The Holmes Point neighborhood is characterized by steep wooded slopes, ravines, creeks, and soils that are susceptible to erosion and slides. The HPO was originally adopted by King County in the 1990s to preserve the area's existing tree canopy as a means of mitigating the risks of slides, reducing surface water runoff, and preserving the neighborhood's forested character. Since then, and particularly within the last few years, development activity has proven that the

HPO is only moderately effective in protecting established trees during development activity. On the hand, by prohibiting the removal of significant trees (except during development), the HPO has restricted homeowners from making relatively minor landscaping changes on their properties.

As part of the Finn Hill neighborhood plan, Holmes Point residents reaffirmed their desire to bolster protections of their neighborhood's tree canopy while allowing some flexibility to homeowners to remove unwanted trees. Since late 2016, we have worked with the City's staff to address these concerns. As noted above, the staff has committed significant time to working through a variety of complicated issue with us and we are grateful for the attention they have given to this project. And notable improvements have been made: much of Holmes Point was downzoned earlier this year, allowing for more tree canopy to be preserved. Furthermore, the City required last fall that Holmes Point subdivisions and short plats be permitted through integrated development plans, which require that tree retention plans be considered and finalized at the outset of the development process rather than undergoing adjustment as sites are graded and building lots are improved.

#### Proposed HPO and city tree ordinance revisions – points of agreement

The staff has now forwarded recommendations that should make the HPO a more effective ordinance in several respects. We list what we regard as the four most important improvements below:

*Removal by homeowners of unwanted trees (see issue 18 on the staff's issues chart).* The proposed amendments would allow a homeowner to remove up to two significant trees from his or her property every five years provided that each tree is replaced with a new planting. This represents a material change to the current ordinance, which prohibits the removal of any significant tree unless it is shown to be diseased or a nuisance. We support this revision as a reasonable balance of a resident's desire to make improvements to his or her home and the need to preserve the neighborhood's tree canopy. We recommend, however, that the staff's proposed revision include language requiring the homeowner to provide in the tree removal request form a diagram showing the location of the trees to be removed and also to notify the City after tree removal occurs that replacement trees have been planted. In the absence of such communications from the homeowner, we would be concerned that compliance with the HPO by homeowners will decline over time. (See FHNA's proposed revision to KZC 70.15.2, attached.)

*Creation of PNAs in multi-lot developments (see issue 8).* We support the notion that PNAs in subdivisions and short plats should be aggregated to create natural spaces for trees and native vegetation that will be larger than would be the case if each homesite in the subdivision was allocated its own PNA. A consolidated PNA may not be the best solution in every case, however. The proposed code language gives the Planning Department discretion to consolidate PNAs or to disaggregate them in order to achieve the best outcome in terms of protecting trees, and we hope that planners will take this responsibility seriously.

*50% canopy goal for multi-lot tree retention plans (see issue 11).* We are particularly pleased that the staff has proposed that a developer's tree retention plans should be prepared by a licensed landscape architect to include plantings that will generate a 50% canopy in twenty years' time and that the architect will be required to certify prior to final approval that the plantings were installed as specified. While this provision does not guarantee that a robust canopy will develop over a period of two decades, it does at least ensure that a baseline is established for achieving that goal. Reference to a 50% tree canopy, as opposed to tree credits (which FHNA continues to find problematic<sup>1</sup>), should not be difficult to administer because the plan will be prepared by a professional, who should be well acquainted with tree canopy data, and will be reviewed by the City's arborist, who should likewise be familiar with canopy measurements.

*Meaningful penalties (see issue 17).* We endorse the staff's recommendation to stiffen the penalties for violating the HPO and the city's tree ordinance. As the staff memo points out, revisions to the Municipal Code to implement these proposals are not within the purview of the Planning Commission but they represent a critical part of ensuring the tree protection standards are complied with. We are hopeful that the staff recommendations regarding fines and license revocations for violations will be adopted by the City Council. As we note at the conclusion of this letter, we also believe that more resources for an effective inspection program are an essential element of a successful tree preservation program.

#### Points on which City staff and FHNA have not agreed

Our principal concern with the staff's proposed modification of the HPO is that it does not effectively protect the neighborhood's existing trees against removal by developers or homeowners. While it is important to ensure that tree loss due to development or due to permitted cutting by homeowners is replaced with new plantings, it is vital that the mature trees that remain in Holmes Point today are preserved. These are the trees that hold soils in

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<sup>1</sup> In its April 26, 2017, and August 22, 2017, letters to the Planning Commission about the HPO, FHNA stated that it preferred that tree retention and tree replacement requirements be expressed in terms of canopy percentages because they were directly related to the neighborhoods goal of sustaining a certain percentage of tree canopy cover, whereas tree credits were not clearly related to the achievement of that goal. We said that we would be willing to support the use of tree credits if an equation of credits to canopy percentages could be demonstrated. The staff has produced a white paper that attempts to establish such an equation. (See attachment to staff memo of April 19, 2018.) Unfortunately, the white paper is fundamentally flawed in that it attempts to link tree credits with canopy cover using one tree species, a red maple, whose a crown (used for calculating canopy cover) is considerably larger than the crowns of the coniferous trees that are native to our area and are generally preferred for revegetation. The number of tree credits that would be needed to achieve a given level of canopy coverage is much higher in the case of all conifers and many deciduous trees than is indicated by the use of a red maple. However, because the staff has agreed to use a tree canopy percentage as the goal for tree retention plans, FHNA does not see any need at this time to debate whether tree credits are an appropriate measure for replanting requirements. The issue should be explored in greater depth when the City reviews its general tree ordinance later this year or in 2019.

place and that absorb water, protecting hillsides and minimizing pollution of streams and Lake Washington. Preserving established trees and groves should be a top priority of the HPO.

*Floor for tree removals (see issue 13).* FHNA proposed over a year ago that some minimum threshold should be established for site clearing in the context of new developments and for tree removals by homeowners. We suggested that such activities should not be allowed to reduce a site's existing canopy cover below 30%. We believe this standard is will not unduly restrict either developers or homeowners. In the case of the development of subdivisions or shortplats, the aggregated PNAs (discussed above) should provide a high percentage of canopy cover over a concentrated area of the project site, which should significantly reduce the "burden" of retaining canopy cover over the remainder of the site needed to achieve an overall canopy cover of 30%. For example, if the subdivision's PNA has 100% canopy cover (representing canopy coverage of 25% of the full subdivision site), the remaining 75% of the site would need only 7% canopy cover to provide 30% coverage over the full site. If the PNA had only 60% canopy cover at the time it was established, the remaining 75% of the site would need only 20% canopy cover to achieve the 30% canopy floor. The canopy requirements in non-PNA areas are low enough, in our view, that they should not unreasonably curtail development. Also, because tree retention plans for multi-lot developments must be prepared and reviewed by qualified professionals, we believe that the use of a tree canopy percentage would not represent an administrative burden to the developer or the City.

In regard to tree removals by homeowners, FHNA recommends that the homeowner's tree removal request form include a certification that the proposed removals will not reduce the canopy over his or her property below 30%. Staff has suggested that homeowners are ill-equipped to make such an assessment. FHNA disagrees. Homeowners now have access to satellite imagery and online canopy calculation tools that enable them to estimate current canopy coverage and the coverage that will remain following the removal of one or two trees. Also, it should be noted that the homeowner's request form will not be subject to independent analysis by the City. Good faith estimates should be sufficient. But some floor for Finn Hill, other than the two tree per parcel standard set in the general tree ordinance, is warranted.

Staff has asserted that the imposition of a canopy floor is unnecessary to protect existing trees because the revised HPO contains language stating that significant trees in side yards and landscaped areas cannot be removed and because the preparation of tree retention plans as part of the IDP process should minimize unnecessary elimination of mature trees. These are helpful measures. However, the current HPO already says that significant trees "must be retained", so the new language protecting high retention value trees does not actually represent a substantive change from existing legislation. And if these measures prove to be effective in protecting trees during development activity, the 30% floor advocated by FHNA should not represent an additional restriction on property development. The benefits to be derived from the new high retention value tree language and from the IDP are speculative; the 30% canopy

minimum has the advantage of being specific and directly related to preserving existing canopy cover.

*Definition of high retention value trees (see issue 12).* As noted above, the staff has proposed language that requires all high retention value trees be retained. While the current ordinance already states that all significant trees must be retained, the staff proposal is an improvement to the extent that it overwrites an apparent interpretation that the current ordinance requires that significant trees be retained only “if feasible”<sup>2</sup>. FHNA has long contended that this interpretation has no basis in the ordinance, but FHNA welcomes the new language because it should eliminate that interpretation once and for all.

Unfortunately, the definition of high retention value tree in Chapter 95 is unclear: it is difficult to determine whether the definition applies both to all viable trees in “required” side yards and landscaping areas and to trees on slopes of 10% or greater and in groves, or whether it applies only to such trees if they are in required side yards and landscaping areas. Also, the use “required” as a qualifier leaves unclear whether trees in any side yards or landscaping areas in the Holmes Point are high retention value trees (as the staff has indicated they are intended to be). FHNA has therefore suggested revisions to the high value retention tree definition in order to avoid confusion in the future.

*Protection of Landmark trees (see issue 12).* Arborists note that while it is useful to set canopy coverage goals, it is also important to protect the quality of the trees that comprise that canopy. Accordingly, FHNA has advocated for provisions that provide special status to trees of exceptional value. The ordinances of Lake Forest Park and Carmel, California, state straightforwardly that such trees may not be removed, subject to a showing by the developer or homeowner that retention of the tree would deprive the applicant of all reasonable economic use of the property. While FHNA would enthusiastically support including such a provision in the HPO, and is confident that it would not represent an illegal taking (given that the same standard is used by Kirkland in its wetlands protection ordinance), we recognize that it is unlikely that the City would embrace this formulation for protecting exceptional trees. We have therefore proposed instead that the Planning staff be authorized to modify building footprints to accommodate “landmark” trees and we have offered a definition of such trees that is based on language found in the City of Medina ordinance. This proposed amendment expands the authority already given to planners to make minor footprint modifications to preserve trees by giving the staff discretion to require more significant adjustments if needed to save a particularly valuable tree in the Holmes Point neighborhood.

*Critical root zone incursions (see issue 14).* In its discussions with staff, FHNA understood that the HPO would be revised to discourage grading and trenching activities that compromise the

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<sup>2</sup> Language in the current HPO ordinance regarding what is “feasible” and what should be protected “to the maximum extent possible” relates to the designation of PNAs, not to the retention of significant trees. Compare KZC 70.15.3a with KZC 70.15.3c (current code language).

health of trees by compacting soil or trenching within the critical root zones of significant trees. The staff's proposed ordinance amendments include a definition of critical root zone but provisions relating to development activities around significant trees continue to be expressed in terms of the "limit of disturbance" surrounding a tree, which is defined as the area which the developer's tree professional has concluded is necessary for maintaining the health of the tree; that area may be considerably smaller than the critical root zone. To ensure that such judgments receive appropriate scrutiny by the City, FHNA has proposed that tree plans should include information about each tree in whose critical root zone development activity will occur. If the developer's arborist concludes that such activity will not be harmful to the tree, the retention plan should include an explanation for the decision and, if mitigating aftercare is required to ensure the health of the tree, the plan should specify the aftercare procedures needed. The City's arborist should assess these conclusions and approve the plan only if he or she agrees that they are justified<sup>3</sup>.

*Concerns about illegal takings.* Staff has expressed concerns that several of the recommendations proposed by FHNA would increase the City's exposure to takings claims. FHNA has not performed a legal analysis of what constitutes a valid takings claim. It is probable that such claims are highly fact specific. However, we note that the City has a procedure for requesting variances and, as mentioned above, many cities – including Kirkland – have specified that prohibitions on certain forms of land use will be relaxed upon a showing by the affected owner that compliance would deprive the owner of any reasonable economic use of the property. It is our understanding, based on a conversation with counsel to the City of Lake Forest Park, that this exception is sufficient to protect the City from an illegal takings claim. FHNA would support the inclusion of such an exception standard in conjunction with the proposals it has summarized above.

#### Importance of a robust inspection program

Adopting strong but fair amendments to the HPO is a critical step toward effective protection of the tree canopy in the Holmes Point neighborhood. But the benefits of a revised ordinance will be lost unless development activity is monitored closely by City inspectors. Holmes Point residents have observed numerous instances in which construction crews have moved fences during grading activity, causing significant damage to trees that were supposed to be protected. It is clear that inspections during the course of such activities are needed. We have therefore added language to Chapter 70 to indicate that such inspections will occur. More importantly, we

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<sup>3</sup> FHNA has also noted in its comments on Chapter 95 KZC that the staff revision of the tree retention plan table in KZC 95.30 appears to be incomplete with respect to tree retention plans for development activity within the HPO area. Our focus is on ensuring that tree retention plans for all types of development in the HPO include appropriate detail about impacts on significant trees. We also want to ensure that the small sector of the HPO that is covered by multi-family and professional zoning is appropriately covered by tree retention plan requirements. We have therefore added some "Xs" to the table. However, we have not discussed with staff whether our additions are actually required or whether other aspects of the proposed amendments to Chapters 70 and 95 address our concerns.

will also advocate before the Council that additional funding must be found to support the cost of such inspections. We hope that the Commission and City staff will concur that tree preservation will be markedly enhanced if compliance inspection resources are increased.

FHNA's proposed code revisions

Attached to this letter are revisions that FHNA proposes be made to the staff's recommended amendments to Chapters 70 and 95 of the Zoning Code and to Title 1 of the Municipal Code (pertaining to fines). The FHNA revisions are shown as redlines to staff drafts dated April 13, 2018. We believe that the April 13 drafts are the same as those forwarded to the Commission on April 20 with the exception of language added last week by the staff to KZC 70.20.6-7 concerning the preparation and review of tree retention plans by a developer's landscape architect. We have not confirmed this assumption, however.

Shortly after reviewing the staff's April 13 drafts, we submitted comments and edits similar to those summarized above. We met with staff to discuss these edits on April 17 but focused exclusively at that meeting on the relative merits of tree canopy percentages and tree credits. That meeting was constructive in that it resulted in a staff proposal to require that a developer's landscape architect prepare tree retention plans designed to produce a 50% canopy in twenty years' time. However, we did not have time at the meeting to address any other issues concerning the HPO. We therefore request the opportunity to meet with staff again between now and May 24<sup>th</sup> to review our proposed revisions. We believe that additional discussions will result in a tighter draft of the HPO and we hope they will further narrow the matters on which FHNA and staff have different points of view.

Thank you for considering these observations on a regulation that is very important to the Holmes Point community.

Respectfully submitted,

FINN HILL NEIGHBORHOOD ALLIANCE



Scott Morris, President

Attachments: Chapter 70 KZC, Chapter 95 KZC, Title 1 Kirkland Municipal Code

Cc: Janice Coogan  
Jeremy McMahan  
Adam Weinstein  
Eric Shields  
Kirkland City Council  
FHNA Board of Director

**KZC Chapter 70 – [DRAFT CLEAN COPY] HOLMES POINT OVERLAY ZONE AMENDMENTS 4/13/18**

**Sections:**

- 70.05 Purpose and Intent
- 70.10 Applicability
- 70.15 Tree Removal – Not Associated with Development Activity
- 70.20 Tree Retention Associated with Development Activity

**70.05 Purpose and Intent**

The purpose of the Holmes Point Overlay (HPO) development standards is to allow infill at urban densities while providing an increased level of environmental protection for the Holmes Point area, an urban residential area characterized by a predominance of critical areas, fewer roads and other impervious surfaces, dense tree and vegetation cover and wildlife habitat. To further the Finn Hill Neighborhood Plan policies, the standards in this Chapter limit allowable site disturbance; reduce visual impacts of development; maintain community character; protect native trees, vegetation and soils; reduce surface water runoff; protect wildlife habitat; slow the loss of tree canopy resulting from tree removal, and establish requirements to maintain a 60 percent tree canopy goal in the HPO.

(Ord. 4437 § 1, 2014; Ord. 4196 § 1, 2009)

**70.10 Applicability**

This Chapter applies to properties within the HPO Zone on the Kirkland Zoning Map. These regulations add to and in some cases supersede the other regulations of this code, including but not limited to regulations in KZC Chapters 15 (Low Density Residential Zones), 95 (Tree Management and Required Landscaping) and KMC Title 22 (Subdivisions).

Terms and requirements not defined in this section shall be defined as set forth in Chapter 95 KZC

**70.15 Tree Removal – Not Associated with Development Activity**

Tree removal in the HPO that is not associated with development activity is subject to all standards for tree removal, replacements and tree removal permits as described in Chapter 95.23 KZC, subsections (5)(b) through (d) and the following standards:

1. Permit Required – Protected Natural Area (PNA). No trees shall be removed from a designated PNA unless they are hazard or nuisance trees, or are approved for removal as part of a Forest Management Plan. Any tree removal in a PNA shall be authorized through a tree removal permit as provided in this chapter, unless the activity is exempted in KZC 95.20. Permit application, procedures and appeal requirements shall be in accordance to KZC 95.23.2-4. For every significant tree that is removed from a PNA, the applicant shall plant a native tree species of the same deciduous or coniferous type as the removed tree. Replacement trees shall meet the standards of subsection 70.20.1(f) 2.
2. Tree Removal Allowances – Non-PNA Areas. Any private property owner of developed property may remove up to two significant trees from their property, within a five year period without applying for a tree removal permit, provided that the homeowner submits a request form to the City that includes a diagram showing the location of the trees to be removed and affirms that:
  - a. There is no active application for development activity for the site;
  - b. The trees to be removed were not required to be retained or planted as a condition of previous development activity or the provisions of this section; and
  - c. The tree canopy coverage remaining on the property following the proposed tree removals will be no less than 30%.

**Commented [SM1]:** The location information is necessary to discourage the removal of PNA trees or trees that were planted pursuant to a tree retention plan or a replanting requirement (see below).

**Commented [SM2]:** Definitions of “canopy” and “canopy coverage” can be taken from Lake Forest Park ordinance.

For every significant tree that is removed, the planting of one replacement tree is required. Conifer species are the preferred replacement trees in Non-PNA areas in the HPO. The Planning and Building Department shall establish and maintain an approved Tree Species List for tree removal replacements in Non-PNA areas. Replacement trees shall meet the standards of subsection 70.20.1(f) 2. The homeowner shall notify the City in writing when replacement trees have been planted and shall describe the location of the replacement trees in such notice. The homeowner will bear responsibility for maintaining the replacement trees as specified in KZC 95.51.

**Commented [SM3]:** This post-planting notice is required to discourage homeowners from removing or killing replacement trees.

3. **Forest Management Plan.** Private property owners seeking to remove more than two trees ~~for the purpose of long-term stand management~~ that are not exempt under KZC 95.20 may ~~submit~~ apply to do so for the purpose of long-term stand management by submitting a Forest Management Plan per Chapter 95.23 subsection 5(e) KZC.

### 70.20 Tree Retention Associated with Development Activity

The following standards shall be applied to all residential development:

#### 1. Protected Natural Area (PNA) Designation.

- a. Applicability - The requirement for designating and restoring a PNA with vegetation set forth in subsection (4)(a) and (b) applies to:
  - 1) New development or redevelopment, 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.
  - 2) Short Plats and Subdivisions.
  - 3) Land Surface Modification (LSM) permits associated with the development of more than one lot.
- b. Size - At least 25 percent of the total lot area shall be designated as a Protected Natural Area (PNA), in a location and configuration that requires no alteration of existing native soil, native understory, vegetation and trees if a PNA that substantially complies with the standards of 70.20.1(e) can be identified or, if no such PNA exists at the time of designation, in a location and configuration that requires the least alteration of existing native soil, native understory, vegetation and trees.
- c. Location – PNA designation, including subdivisions, short subdivisions and Land Surface Modifications associated with the development of more than one lot shall be consolidated in one larger contiguous area on the subject property unless the City determines that designation of more than one area results in superior protection of existing trees and vegetation. The PNA shall be designated to encompass any critical areas on the lot and, to the maximum extent possible, consist of existing viable trees and native vegetation of varying size, age and species that meet the minimum vegetation condition standards set forth in subsection (1)(e) of this section.
- d. Incentives and Variations to Development Standards - Applicants shall pursue Incentives and Variations to Development Standards per Chapter 95.32 KZC to facilitate consolidation of PNAs.
- e. Minimum Tree and Vegetation Conditions in the PNA - Priority is given to designate contiguous areas containing native vegetation meeting the following standards:
  - 1) Trees – Viable trees at a tree density of 150 tree credits per acre within the PNA, calculated as described in KZC 95.33.

Example: A 10,000-square-foot lot requires a 2,500 sq. ft. PNA (10,000 x 25% = 2,500 sq. ft.). Within the 2,500 sq. ft. PNA, nine (9) tree credits are required (2,500 sq. ft./43,560 sq. ft. = 0.057 acres x 150 tree credits = 8.6, rounded to nine (9) tree credits). Note: the tree density for the remaining lot area is ~~30-50~~ tree credits per acre.

**Commented [SM4]:** Revised to conform with staff language in section 2b below.

- 2) Shrubs – Predominately 36 inches high, covering at least 60 percent of the PNA.
  - 3) Living Groundcovers – Covering at least 60 percent of the PNA.
- f. Minimum Supplemental Tree and Vegetation Standards - If the subject property contains insufficient existing vegetation pursuant to subsection (4)(e) of this section, or if the Planning Official determines it is not feasible to retain an existing vegetation area, a PNA shall be restored or established in a location approved by the Planning Official. The applicant shall provide at a minimum:
- 1) Native Plants - Trees, shrubs and groundcovers selected from the Kirkland Native Plant List, or other native species approved by the Planning Official shall be used to supplement vegetation in the PNA.
  - 2) Trees –The minimum size for a supplemental tree worth one tree credit in the PNA shall be at least six (6) feet in height for a conifer and at least two inches in caliper (DBH) for deciduous or broad-leaf evergreen trees, measured from existing grade. Native conifer tree species are preferred over deciduous trees in the PNA. Supplemental trees shall be planted in such locations in the PNA and in such numbers as to provide assurance that the tree canopy over the PNA shall be 100% within 20 years following establishment of the PNA.
  - 3) Shrubs – Planted to attain coverage of at least 80 percent of the area within two years, and at the time of planting be between 2- and 5-gallon pots or balled and burlapped equivalents.
  - 4) Living Groundcovers – Planted from either 4-inch pot with 12-inch spacing or 1-gallon pot with 18-inch spacing to cover within two years 80 percent of the naturalized area.
  - 5) Soil Specifications – Soils in supplemental vegetation areas shall be amended to comply with City of Kirkland Public Works Pre-Approved Plan CK-E.12 standard for planting beds.
  - 6) Mulch – Mulch in supplemental vegetation areas shall comply with KZC 95.50.
  - 7) Prohibited Plants – Invasive weeds, noxious plants and trees listed on the Kirkland Prohibited Plant List shall be removed within the PNA in a manner that will not harm trees and vegetation that are to be retained.
2. Non-PNA Portion of Property. Total site alteration, including impervious surfaces and other alterations, shall not exceed 75 percent of the total lot area. In addition to the PNA and the area allowed for buildings and other impervious surfaces under section (4), up to 50 percent of the total lot area may be used for garden, lawn or landscaping, provided:
- a. All High Retention Value Trees, as defined in Chapter 95 KZC, shall be retained in the garden, lawn or landscaping portion of property. In order to retain Landmark Trees, the Planning Official shall have authority to make adjustments to the location of building footprints, adjustments to the location of driveways and access ways, or adjustments to the location of walkways, easements or utilities. The Planning Official and the applicant shall work in good faith to find reasonable solutions.
  - a-b. Existing and supplemental trees combined shall meet a minimum tree density of 50 tree credits per acre in the Non-PNA portion of property, calculated as described in KZC 95.33. The area limits set forth in this subsection are to be measured at grade level; the area of allowable garden, lawn or landscaping may intrude into the drip line of a significant tree required to be retained under this subsection if it is demonstrated not to cause root damage or otherwise imperil the tree’s health; and
  - b-c. If development on the lot is to be served by an on-site sewage disposal system, any areas required by the Department of Public Health to be set aside for on-site sewage disposal systems shall be contained as much as possible within the portion of the lot altered for garden, lawn or landscaping as provided by this subsection. If elements of the on-site sewage disposal system must be installed outside the landscaped area, the elements must be installed so as not to damage any significant trees required to be retained under

Commented [SM5]: See also comment on KZC 95.51

subsection (3)(a) of this section, and any plants that are damaged must be replaced with similar native plants.

e-d. Soils on all proposed projects that are subject to clearing and grading that have not been covered by impervious surface, incorporated into a drainage facility or engineered as structural fill or slope shall, at project completion, meet soil amendment requirements per Pre-Approved Plan CK-E.12 within the clearing limits, i.e. in all disturbed areas. In the HPO, this will include all areas where alteration of soil characteristics has occurred.

3. Critical Areas, Surface Water Development Review. When review under Chapter 85 KZC (Critical Areas: Geologically Hazardous Areas) or Chapter 90 KZC (Critical Areas: Wetlands, Streams, Minor Lakes, Fish and Wildlife Habitat Conservation Areas and Frequently Flooded Areas) or the City of Kirkland’s Surface Water Design Manual is required, the review shall assume the maximum development permitted by this Chapter will occur on the subject property, and the threshold of approval shall require a demonstration of no significant adverse impact on properties located downhill or downstream from the proposed development.
4. Maximum Lot Coverage. Total lot coverage of impervious surfaces shall be limited within every building lot as follows:
  - a. On lots up to 6,500 square feet in size, 2,600 square feet;
  - b. On lots 6,501 to 9,000 square feet in size, 2,600 square feet plus 28 percent of the lot area over 6,500 square feet;
  - c. On lots over 9,000 square feet in size, 3,300 square feet plus 10 percent of the lot area over 9,000 square feet;
  - d. On a lot already developed, cleared or otherwise altered up to or in excess of the limits set forth above prior to July 6, 1999, new impervious surfaces shall be limited to five (5) percent of the area of the lot, not to exceed 750 square feet; and
  - e. For purposes of computing the allowable lot coverage within each lot, private streets, joint-use driveways or other impervious-surfaced access facilities required for vehicular access to a lot in easements or within flag lots shall be excluded from calculations.

**Maximum Lot Coverage Summary Table:**

Lot Size	Maximum Lot Coverage
Less than 6,500 sq. ft.	2,600 sq. ft.
6,501 sq. ft. to 9,000 sq. ft.	2,600 sq. ft. plus 28% of the lot area over 6,500 sq. ft.
9,001 sq. ft. or greater	3,300 sq. ft. plus 10% of the lot area over 9,000 sq. ft.
Developed, cleared or altered lots	New impervious limited to 5% of the total lot area, but not to exceed 750 sq. ft.

- f. For development activity occurring after July 6, 1999, upon written request from the applicant, the Planning Director may allow up to a 10 percent increase in impervious surface on individual lots over the limits set forth above, provided such increase is the minimum necessary to allow reasonable use of the

property and meets all other applicable decision criteria for a variance as provided in Chapter 120 KZC, and one or more of the following circumstances applies:

- 1) Development of a lot will require a driveway 60 feet or longer from the lot boundary to the proposed dwelling unit;
- 2) On-site flow control facilities are required by the Public Works Department;
- 3) The requested increase will allow placement of new development on the site in such a way as to allow preservation of one or more additional significant trees, as defined in Chapter 95 KZC, that would otherwise be cleared; or
- 4) The requested increase is necessary to provide additional parking, access ramp or other facilities needed to make a dwelling accessible for a mobility-impaired resident.

(Ord. 4437 § 1, 2014; Ord. 4196 § 1, 2009)

5. Subdivisions, Short Subdivisions and Land Surface Modifications. The following requirements shall apply to new development or redevelopment, 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; Subdivisions, and short subdivisions; and land surface modification permits associated with the development of more than one lot ~~shall be subject to the following requirements:~~
  - a. Applications shall include a comprehensive review of Tree Retention Plan as outlined in KZC 95.30, including the location of the required PNA. Phased review of Tree Retention Plans as described in KZC 95.30(6)(a) is not permitted within the HPO zone;
  - b. The applicant may propose or the City may require alterations to the proposed subdivision, short subdivision, or LSM in order to ensure the best tree retention and location for the PNA. Such alterations include 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 per Chapter 95.32;
  - c. New public or private road improvements shall be the minimum necessary to serve the development on the site in accordance with Chapter 110 KZC. The City shall consider granting modifications to the road standards to further minimize tree removal, site disturbance, and consistent with pedestrian and traffic safety considerations, and the other purposes of the road standards;
  - d. Impervious surfaces and other alterations within each lot shall be limited as provided in subsections (2), (3) and (4) of this Section;
  - e. For larger PNAs, the City ~~may~~shall require permanent signage to be installed along the perimeter of the PNA designating the area as a PNA prior to recording. Signage shall meet the administrative standards of the Planning and Building Department in regard to design, number and location. The signs must be maintained and remain in perpetuity; and
  - f. The proposed PNA shall generally be established within a separate tract. The approved PNA shall be shown on the face of the plat prior to recording and designate who is responsible for maintaining the PNA. in accordance with KZC 7020.8. The designation shall specify that the owners (and their successors, transferees and assigns) of parcels shown in the subdivision plat or short plat shall bear such maintenance responsibility jointly and severally, unless the City determines that a different allocation of responsibilities will enhance long-term maintenance of the PNA.
6. Tree Retention and Landscape Plan Required.
  - a. The applicant shall submit a Tree Retention Plan required under KZC 95.30. In addition, it shall include the existing conditions and general locations of all shrubs and groundcover on the subject property.

**Commented [SM6]:** This amendment has been added to make clear that the obligation burdens/runs with the land in perpetuity and is not an obligation that is personal to the original owner of a lot in the subdivision. How will owners learn that they have responsibility for maintaining their subdivision's PNA?

b. In addition to the Tree Retention Plan required pursuant to KZC 95.30, permit application materials shall ~~shall include a landscape plan prepared by a landscape architect licensed in Washington State that clearly depicts~~ depicts the quantity, location, species, and size of supplemental plant materials proposed to comply with ~~the with the tree density and vegetation~~ requirements of this section; ~~for the PNA and Non-PNA portions of the subject property. The landscape architect shall indicate on the plan that based on the size, quantity, spacing and species of the existing and supplemental trees, a minimum 50% tree canopy cover in the Non-PNA area and 100% tree canopy cover in the PNA area portions of the lot will be achieved in twenty years' time.~~ Plants installed in the PNA shall be integrated with existing native vegetation and planted in a naturalistic pattern per the standards in Chapter 83.400 KZC. The City shall provide a list of tree species where supplemental trees are required to meet minimum tree density credits outside the PNA. The Planning Official shall review and approve the landscape plan.

**Commented [SM7]:** FHNA notes that this language was proposed by the Planning Department staff in the draft of code amendments submitted to the Commission on April 20. FHNA supports this language.

7. Site Inspections. The Planning and Building Department shall conduct site inspections prior to approving any site alteration or development activity as follows:

- a. Prior to altering the site, the applicant shall clearly delineate the proposed PNA and the area of the lot proposed to be altered and built on with 4-foot high stakes and high-visibility tape or other conspicuous and durable means, and shall depict this area on all site plans included in the permit application;
- b. Prior to approving any short subdivision, subdivision, building or land surface modification permit on any parcel, the Planning Official shall inspect the subject property to verify the existing conditions, tree and vegetation cover, and any previous site alteration or building on the site;

~~c.~~ Prior to permit issuance, the applicant shall install tree and soil protective fencing per KZC 95.34, subject to Planning Official inspection. ~~TheIn addition to requirements imposed by KZC 95.34, the~~ protective fencing ~~shall be staked to the ground,~~ shall remain in the approved location for the duration of development activities, including required soil amendments; ~~and, and shall bear signage stating that the fence may not be moved during development activities;~~

**Commented [SM8]:** Given numerous cases of “fence creep” noted in Finn Hill, FHNA recommends more specific language the requires fencing to fixed in place.

~~e.d.~~ Prior to grading, other land surface modifications and the removal of significant trees, the applicant shall ~~notify the City of the scheduled dates for such activity and the City shall have the right to inspect the activity at any time to ensure compliance with the requirements of Chapters 70 and 95 KZC and any other applicable provisions of the zoning code; and~~

**Commented [SM9]:** Again, the intent here is to discourage the occurrence of violations, as opposed to penalizing them after the fact.

~~d.c.~~ Prior to Planning Official final inspection of any land surface modification or building permit, or recording ~~of~~ any short plat or subdivision, ~~all a landscape architect licensed by the State of Washington shall inspect the landscaping within the PNA must be installed and the applicant shall provide a final~~ submit an as-built landscape plan showing and photo documentation verifying to the Planning Official that all vegetation required to be planted or preserved; ~~as indicated on the approved landscape plan was installed.~~

**Commented [SM10]:** FHNA notes that this language was proposed by the Planning Department staff in the draft of code amendments submitted to the Commission on April 20. FHNA supports this language.

~~f.~~

8. Tree and Landscape Maintenance Requirements

In general, forested hydrological conditions, soil stability and the duff layer shall be maintained on properties in the HPO as follows:

- a. Protected Natural Area(s) – PNA(s) shall be retained in perpetuity.
  - 1) For subdivisions, short subdivisions and LSMs associated with more than one lot, PNAs shall be set aside in a tract. In other developments, a recorded protected easement is required. The approved PNA shall be shown in a form approved by the City Attorney or other legal document recorded with and on the face of the plat with a designation of who is responsible for maintaining the PNA. Land survey information shall be provided for this purpose in a format approved by the Planning Official.

- 2) The applicant, landowner, or successors in interest shall be responsible for the ongoing maintenance of vegetation required under Section 70.20 of this Chapter and KZC 95. For short plats and subdivisions containing larger consolidated PNAs where extensive supplemental planting is required, the ~~City may require each applicant shall furnish~~ a financial security under Chapter 175 KZC to ensure compliance with the ~~monitoring and~~ maintenance of trees and vegetation planted in the PNA ~~and the City shall inspect such PNA for compliance [annually] for a period of five(5) years following the establishment of the PNA.~~
  - 3) Plants that die must be replaced in kind or with similar plants contained on the Native Plant List, or other native species approved by the Planning Official.
  - 4) Construction of primitive pedestrian-only trails may occur if they can be designed with minimal environmental impact. In no case shall trails be constructed of concrete, asphalt, or other impervious surfaces.
- b. Non-PNA Portions of the lot which are not geologically hazardous areas or do not contain wetlands, streams, minor lakes, fish and wildlife habitat conservation areas and frequently flooded areas, or critical areas governed by Chapter 85 or 90 KZC, shall be maintained per ~~Chapter KZC 70.15.2 KZC and 90.51.~~
9. Conformance with Other Provisions. Conformance with this Chapter shall not relieve an applicant from conforming to any other applicable provisions of the Zoning Code, Subdivision Ordinance, or Shoreline Master Program.

(Ord. 4619 § 1, 2017; Ord. 4551 § 4, 2017; Ord. 4491 §§ 3, 11, 2015; Ord. 4437 § 1, 2014; Ord. 4196 § 1, 2009)

**Commented [SM11]:** Note: the bonding and inspection requirements would apply only to larger PNAs where extensive replanting is required.

**KZC Chapter 95 – [DRAFT CODE AMENDMENTS WITH MARKUPS] TREE MANAGEMENT AND  
REQUIRED LANDSCAPING 4/13/18**

**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 that~~ is equal to the greater of the dripline of the tree or one (1) foot radius 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.
- x. Inner Critical Root Zone (ICRZ) –An area encircling a tree that is half the distance of the Critical Root Zone, or the inner half of the Critical Root Zone radius. Applicable only in the HPO only.
- xx. Landmark tree – A tree that a qualified tree professional appointed by the City has determined contributes to the character of the community because of its size, age and condition and: (a) is a species shown in the City’s list of native tree species (b) has a diameter breast height of [xx] inches or more; and (c) is assessed to be healthy and likely to survive for at least 10 more years assuming proper care.
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. All high retention value trees in the Holmes Point Overlay area shall be retained as specified in KZC 70.20. Tree retention efforts shall also 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

**Commented [SM1]:** Adapted from Medina tree ordinance. Other local jurisdictions’ tree ordinances contain similar definitions.

**Commented [SM2]:** It is unclear how this sentence, which appears in Chapter 95 currently, relates to the preceding sentence. Does it limit that types of viable trees in side yards that are entitled to protection? Does it mean that the trees listed below are also entitled to protection even though they may not be located in side yards? If so, are these trees also high retention value trees for the purposes of both Chapter 95 and Chapter 70?

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 the grove;

- 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 and, unless removal is required to rectify an interruption of service that has occurred or that is imminent, only after City approval of an application by the utility to remove a tree in which the utility demonstrates that such removal is necessary to maintain service to the public. 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.

**Commented [SM3]:** The intent of this additional language is to make clear that removals proposed by a utility to pre-empt an outage in the future should be subject to a permit application in which the utility demonstrates that pruning will not be adequate to avoid the outage. This language can be limited to removals in the HPO area.

**Commented [SM4]:** Where can these plans be reviewed?

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.
- (x) Holmes Point Overlay zone. Properties located within the Holmes Point Overlay area are subject to additional tree removal and replacement standards. See Chapter 70 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) 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 and for sites in the Holmes Point Overlay area as required by KZC 70.15. 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 for any reason, including a likelihood that they will no longer be windfirm.
- e) The reforestation plan ensures perpetuity of the wooded areas with a tree canopy over the relevant property of at least 50% within 20 years following the approval of the Forest Management Plan. The size of planted trees for reforestation shall be a minimum of three (3) six (6) 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)

**Commented [SM5]:** This point is implied but we recommend that it be made explicit.

**Commented [SM6]:** 6’ is specified to conform to the requirements of other revegetation provisions in the code.

### 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, including tree removal allowances, development review requirements, Protected Natural Area designation, soil amendment requirements and the use of Incentives and Variations to development standards to retain High Retention Value trees.

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) and, for sites located in the HPO, any planned incursions within the CRZ of any significant tree that the plan shows as being retained through completion of the proposed development;
- 3) Size (DBH);
- 4) Proposed tree status (trees to be removed or retained);

**Commented [SM7]:** We have recommended at several points in this section that the developer's arborist and the City's arborists identify all anticipated incursions into a significant tree's critical root zone and agree on whether those incursions will adversely affect the viability of the tree and whether aftercare procedures are required to preserve the tree's health, assuming the tree is to be 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). For properties located in the HPO, the Critical Root Zones of significant trees Inner Critical Root Zone must be shown on the site plan and any case where an incursion into the Inner Critical Root Zone of a significant tree is proposed, the site plan must show the Inner Critical Root Zone of such tree;
  - 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. In the HPO, include off-site trees that may be potentially impacted by site disturbances;
  - 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**

<b>Development Activity Required Components</b>	<b>Minor <sup>(1)(3)</sup> – Single-Family, or two attached, detached, or stacked dwelling units,</b>	<b>Major <sup>(2)(3)</sup> Single-Family, or two attached, detached, or stacked dwelling units,</b>	<b>Multifamily, Commercial, any other use other than residential, and related</b>	<b>Short Plat, Subdivisions, cottages, carriage units, two/three- unit homes, and related demolition and land surface</b>
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	and related demolition and land surface modification applications	and related demolition and land surface modification applications	demolition and land surface modification applications	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				
Indicate the <del>inner</del> Critical Root Zone of significant trees on properties in the HPO per <del>95.10.xx30.4(b)5</del>	X	X	X	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
All significant trees on neighboring properties per 95.30.6(a)3	X	X	X	X
<b>TREE RETENTION STANDARDS</b>				
Applicant is encouraged to retain viable trees	X <sup>(4)</sup>			
All High Retention Value trees shall be retained in the HPO.	X <sup>(6)</sup>	X <sup>(6)</sup>	X	X <sup>(6)</sup>
Notification/authorization for significant trees on neighboring properties in the HPO.	X	X	X	X
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>

**Commented [SM8]:** Shouldn't an HPO tree plan include such information in all cases?

**Commented [SM9]:** It is unclear to FHNA why a tree professional would not prepare a plan for any development HPO project (single family, multi-lot, etc) that covers the tree inventory and site plan factors listed above and in this section of the table.

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(7)</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	

Notes:

- (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) Preservation and maintenance agreements in the Holmes Point Overlay zone apply per KZC 70. Public infrastructure projects constructed by a public agency are exempt from this retention standard, but subject to all other applicable retention standards.

(7) Development of properties with the Holmes Point Overlay zone is governed by Chapter 70 KZC and shall ensure that a tree canopy on the property to be developed shall be at least 30% at the time of completion of development.

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, tree retention for subdivision or short plat applications and land surface modification applications associated with the development of more than one lot shall be determined through an integrated process as outlined in subsections (2) through (5) of this section. If any disturbance is proposed within the Critical Root Zone of significant trees on a lot to be developed, the Tree Retention Plan shall indicate either that such tree will be removed or that it will be retained based on the qualified tree.

**Commented [SM10]:** As noted in FHNA comments to Chapter 70, a definition of tree canopy should be included in the KZC. The Lake Forest Park tree ordinance may be a good model for such a definition.

professional's conclusion that that tree will be viable following development, which conclusion shall be set forth in the plan along with a description of the aftercare protocols deemed appropriate by the qualified tree professional. The Tree Retention Plan shall not be approved by the City unless a qualified tree professional appointed by the City concludes in writing that each proposed incursion will not render the tree non-viable and further specifies the appropriate aftercare protocol, if any, for the affected tree. Performance of such aftercare protocols will be specified as conditions to the City's approval of the plan.

In the event that a disturbance is proposed within the Critical Root Zone of significant trees on a neighboring property, the applicant shall provide evidence that the owner of said tree(s) has been notified in writing of the potential impact. If any disturbance is proposed within the Inner Critical Root Zone of significant trees on a neighboring property, the applicant shall provide written authorization from the property owner of the impacted tree(s) for the encroachment. The Planning Official may waive this requirement if the applicant can demonstrate, through non-injurious methods such as air root excavations, that there are no roots within the Critical Root Zone and the City's qualified tree professional concurs in such findings.

- 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;

b) In the case of development within the Holmes Point Overlay area, the modified plan complies with the requirements of Chapter 70 KZC and this chapter; 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 failure to seek modification of the Tree Retention Plan prior to removal of trees in violation of the plan was due to a need to remove an imminent threat to safety or property not created by the developer;

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 from the public 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)

**Commented [SM11]:** Shouldn't these standards for tree protection and notification of neighbors apply to development activity on single lots in the HPO, as opposed to just multi-lot projects?

**Commented [SM12]:** What is the standard for such approval?

**Commented [SM13]:** Confirm that neighbors will receive this notice.

### 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 land 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 and, for properties in the HPO, landmark trees. Subject to applicable provisions of Chapter 70 KZC, 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.

6. Additional variations in the Holmes Point Overlay zone for short plats, subdivisions, and land surface modification applications associated with the development of more than one lot, The Planning Director may approve variations to maximum Floor Area Ratio and Lot Coverage requirements in order to facilitate consolidation of the PNA within a separate tract pursuant to KZC 70. If the PNA is placed in a tract and the creation of the tract results in lot sizes reduced below 10,890 square feet in the RSA 4 zone or 7,260 square feet in the RSA 6 zone, then the maximum Floor Area Ratio and Lot Coverage requirements may be adjusted proportionate to the lot size reduction(s).

(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.

Protected Natural Areas (PNA) located on properties Properties within the HPO zone are subject to tree density credits and tree canopy percentage requirements set forth in Chapter 70 KZC and in this chapter.

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-

**Commented [SM14]:** Means what?

**Commented [SM15]:** These revisions are designed to make clear that high retention value trees must be retained in the HPO and that HPO provisions also authorize the Planning Official to require site alterations for the preservation of landmark trees that may go beyond "minor" footprint adjustments. See also FHNA comments to KZC 70.20.2a.

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.
- c. In the HPO, no tree shall receive more than 11 tree credits regardless of DBH.

**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) six (6)~~ 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)

**Commented [SM16]:** Revised to conform to other replacement tree requirements. See 70.20.f2.

[Sections 95.34-95.50 intentionally omitted from this draft, for the sake of brevity?]

#### 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. ~~Notwithstanding any other provision of this Chapter, trees and other vegetation in designated Protected Natural Areas in the Holmes Point Overlay Zone are to be protected in perpetuity pursuant to KZC 70.20.8(a). Significant trees in the remainder of the lot shall be maintained pursuant to KZC 70.20.8(b) and KZC 95.23.~~
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)

**Commented [SM17]:** The cited sections don't pertain to maintenance but to tree removal. It is very important that maintenance of non-PNA areas that are covered by a developer's revegetation tree plan and that homeowners' obligations to maintain replacement trees are governed by maintenance obligations of at least 5 years.

**KIRKLAND MUNICIPAL CODE [PROPOSED AMENDMENTS] 4/13/18**

**Title 1.12.100 Special provisions relating to enforcement of tree regulations in Chapter 95 KZC.**

(a) General Requirements. This section applies to all trees in the city, including private property trees, public property trees and street trees. Enforcement shall be conducted in accordance with procedures set forth in this chapter. Special enforcement provisions related to tree retention and restoration are set forth in this section.

(b) Authority. It shall be the duty of the applicable department director to administer the provisions of this section.

(c) Civil Penalty Fines for Tree Removal.

(1) It is unlawful to remove or damage trees in violation of the tree regulations in Chapter 95 KZC.

(2) In addition to the ~~parties or persons definitions established defined~~ in Title 1.12.020 KMC, any person who aids or abets in the violation shall be considered to have committed a violation for purposes of fines.

**Commented [SM1]:** Revised language because the intent of the first clause wasn't clear as originally worded

(3) Types of violations. **(Moved here from Table 1.12.100)** Violations of this code include, but are not limited to, the following:

(A) Removal ~~of~~ or damage to tree(s), prior to final tree retention plan approval, or issuance of a city tree removal permit;

(B) Removal ~~of~~ or damage to tree(s) ~~that are shown, or would be shown, to be retained that were not shown as being subject to removal~~ on an approved tree retention plan or any other violation of an approved tree retention plan;

**Commented [SM2]:** Revised language to cover situations in which a tree plan is deficient in listing all trees subject to removal

(C) Removal ~~of~~ or damage to tree(s) without applying for or obtaining a required city tree removal permit; or

(D) Removal ~~of~~ or damage to trees in violation of the terms and conditions of an issued City permit, including any and all violations of American National Standards Institute (ANSI) A300 Pruning Standards.

(4) Civil penalty fines shall be assessed in accordance with Table 1.12.100, based on the Diameter at Breast Height (DBH) of the unlawfully removed or damaged tree trunk. If the DBH of an unlawfully removed or damaged tree cannot be established, the diameter of the remaining stump top shall be used in lieu of DBH. In cases where the stump has been removed but where other evidence indicates a pre-existing tree, the City shall assess a minimum \$10,000 civil penalty fine per unlawfully removed tree. Fines may be assessed against the responsible party in addition to the cost(s) of restoration. The applicable department director may elect not to seek fines if he or she determines that the circumstances do not warrant imposition of fines in addition to the cost(s) of restoration ~~and provides a written explanation for such determination~~.

Unlawfully Removed or Damaged Tree DBH or Stump Diameter	Fines per Tree
Larger than 6 and up to 8 inches	\$1,000
Larger than 8 and up to 12 inches	\$2,000
Larger than 12 and up to 16 inches	\$4,000
Larger than 16 and up to 20 inches	\$8,000

Unlawfully Removed or Damaged Tree DBH or Stump Diameter	Fines per Tree
Larger than 20 and up to 24 inches	\$12,000
Larger than 24 and up to 28 inches	\$16,000
Larger than 28 inches	\$20,000
Tree stump has been eliminated	\$10,000

(5) The fine per-tree penalty for repeat violations shall be determined by multiplying the fine per tree amount in Table 1.12.100 by the number of violations. For example, the fine per-tree amount for second-time violations is multiplied by two, and the fine per-tree amount for third-time violations is multiplied by three, and so on.

(6) Treble Damages. Where violation(s) result in the unlawful removal of or damage to public trees, the City may assess treble damages per RCW 64.12.030.

(d) Tree and Site Restoration.

(1) Restoration Plan. Violators of Chapter 95 KZC or of a permit issued thereunder shall be responsible for restoring unlawfully damaged areas. The goal of the restoration plan shall be a site condition that, to the greatest extent practical, equals the site condition that would have existed in the absence of the violation.

(A) **(Moved from (1) above)** The restoration plan shall depict repairs of any environmental and property damage and restoration of the site.

(B) Tree violations that occur in critical areas and their buffers, on properties within shoreline jurisdiction and within the Holmes Point Overlay zone are subject to the restoration plan requirements per Chapters 90, 85, 83 and 70 KZC, respectively.

(C) **(Moved from (1) above)** Restoration plans shall be approved by the applicable department director. If the violation occurred to public trees, such as trees located in parks or in the right-of-way, the applicable department director may require a violator to pay fees in lieu of restoration per KMC 1.12.100(d)3.

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

(A) The number of trees required to be planted shall be equal to the number of tree credits of illegally removed trees according to Table 95.33.1 KZC or in the case of a restoration plan for property subject to Chapter 75 KZC, the number of trees required to be planted shall equal that necessary to comply with the requirements of that chapter as they apply to the affected property.

(B) The minimum size for a tree planted for restoration shall be a six-foot-tall conifer and/or two-inch caliper deciduous or broadleaf evergreen tree. The City may approve smaller restoration tree sizes at a higher restoration ratio, depending on the size, quality and species of the removed tree.

(C) The restoration plan shall include a maintenance plan and an agreement or security to ensure survival and maintenance of restoration trees for a minimum ~~three~~five-year period; ~~provided, if the~~

The Kirkland Municipal Code is current through Ordinance xx, passed (date?)

**Commented [SM3]:** 5 years will better protect new plantings, and a 5 year standard should apply in all cases in light of the fact that the restoration plan mitigates a previous violation of the code.

~~violation was on a site with an approved tree retention plan, the maintenance period shall be a minimum of five years.~~

(3) **(Moved from above)** In the event the violators cannot restore the unlawfully removed or damaged trees, the violators shall pay a fee in lieu of restoration to the City Forestry Account.

(A) Fees in lieu of restoration shall be based on the value of the subject trees, utilizing the most recent version of the Pacific Northwest Chapter International Society of Arboriculture (ISA) "Species Ratings for Landscape Tree Appraisal" unit cost for conifer and/or deciduous tree replacement, multiplied by the number of illegally removed tree credits per Chapter 95.33.1 KZC.

(B) If the diameter at breast height of a removed or damaged tree trunk is unknown, determinations of tree value shall be made per KMC 1.12.100(c)4.

(e) Hearing on Violation, Failure to Restore or Failure to Pay Fines. The city shall enforce this code via issuance of a notice of civil violation to the violator(s) according to the procedures set forth in Chapter 1.12 KMC. Violator(s) may administratively appeal the notice of civil violation, in which case a hearing on the notice of civil violation shall be held in accordance with Title 1.12.050 KMC and the hearing examiner shall determine whether violation(s) occurred and, if so, the hearing examiner may impose any appropriate fine(s) for such violation(s), as well as require restoration or fee(s) in lieu of restoration. (Ord. 4525 § 1, 2016; Ord. 4451 § 7, 2014; Ord. 4280 § 1 (part), 2011)

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#### KIRKLAND MUNICIPAL CODE

##### Title 7.02.260 Suspension or revocation of license—Criteria.

The director may suspend or revoke a business license or permit when the licensee, officer or partner thereof, or another person with a legal interest in the license:

- (1) With actual or constructive knowledge, causes, aids, abets, or conspires with another to cause any person to violate any of the laws of this state or the city which may affect or relate to the licensed business;
- (2) Has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake;
- (3) Is convicted of, forfeits bond upon, or pleads guilty to any offenses related to the operation of the licensed business;
- (4) Makes a misrepresentation or fails to disclose a material fact to the city related to any of the obligations set forth in this chapter;
- (5) Violates any building, life or public safety, fire or health regulation on the premises in which the business is located after receiving warning from the city to refrain from such violations;
- (6) Is in violation of a zoning or building code or other material regulation of the city, including the responsibility to exercise best efforts to help ensure conflicts between short-term renters and neighbors are avoided as set forth in Section [7.02.300\(3\)](#); or
- (7) Is indebted or obligated to the city for past due fees or taxes, excluding special assessments such as LID assessments. (Ord. 4607 § 6, 2017; Ord. 3884 § 2 (part), 2003)

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**From:** Susan Vossler [<mailto:vosslers66@gmail.com>]  
**Sent:** Thursday, April 26, 2018 2:50 PM  
**To:** Planning Commissioners  
**Subject:** HPO

Dear Planning Commission,

My name is Susan Vossler, I am a 16-year resident of Holmes Point neighborhood. I love this neighborhood, I love this city.

First, I'd like to express my gratitude for all your work on the HPO. Not an easy task in a world where people are griping about regulations.

That said, I fully support a strong plan to preserve our tree canopy. We want our trees to maintain the character of our neighborhood. We need our trees to mitigate erosion, landslides, and climate change. Trees support our clean air and the wildlife.

Your task has been to find a balanced tree ordinance for both homeowners and developers. The problem we currently have is that unreasonable regulations are placed on homeowners while developers are essentially able to remove any and all trees.

I approve of the proposal to allow residents to remove 2 trees every 5 years with the contingency of replanting.

And I'm glad to see that developers would be required to set aside PNAs and submit landscape plans to meet 50% tree canopy over time.

But this does not protect the existing mature trees during the development. We need a certain percentage of the existing trees to stay in place for the reasons I mentioned above, the most important of which are erosion, landslides, and climate change.

I want to see the HPO strengthened to show that a certain number of the existing mature trees, a certain percentage of the existing tree

canopy, is preserved *during* development. And I would like to see the City take a bold stand on enforcing the HPO with developers.

The citizens of Kirkland have made it clear that we value our natural spaces and our trees.

The City of Kirkland has made a commitment to K4C (King County Cities Climate Collaboration) to deal with climate change. Trees are part of that equation and part of that commitment.

As the song by Joni Mitchell goes:

“Don't it always seem to go  
That you don't know what you've got til its gone  
They paved paradise  
And put up a parking lot “

( in our case.....20 homes with no trees)

Thank you for your time.

Susan Vossler

12945 64<sup>th</sup> Ave NE

Kirkland