



# CITY OF KIRKLAND

## CITY COUNCIL

Penny Sweet, Mayor • Jay Arnold, Deputy Mayor • Neal Black • Kelli Curtis  
Amy Falcone • Toby Nixon • Jon Pascal • Kurt Triplett, City Manager

### *Vision Statement*

*Kirkland is one of the most livable cities in America. We are a vibrant, attractive, green and welcoming place to live, work and play. Civic engagement, innovation and diversity are highly valued. We are respectful, fair and inclusive. We honor our rich heritage while embracing the future. Kirkland strives to be a model, sustainable city that values preserving and enhancing our natural environment for our enjoyment and future generations.*

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## AGENDA

### KIRKLAND CITY COUNCIL MEETING

#### City Council Chamber

#### Tuesday, July 6, 2021

#### 5:30 p.m. – Study Session

#### 7:30 p.m. – Regular Meeting

COUNCIL AGENDA materials are available on the City of Kirkland website [www.kirklandwa.gov](http://www.kirklandwa.gov). Information regarding specific agenda topics may also be obtained from the City Clerk's Office on the Friday preceding the Council meeting. You are encouraged to call the City Clerk's Office (425-587-3190) or the City Manager's Office (425-587-3001) if you have any questions concerning City Council meetings, City services, or other municipal matters. The City of Kirkland strives to accommodate people with disabilities. Please contact the City Clerk's Office at 425-587-3190. If you should experience difficulty hearing the proceedings, please bring this to the attention of the Council by raising your hand.

**PLEASE CALL 48 HOURS IN ADVANCE** (425-587-3190) if you require this content in an alternate format or if you need a sign language interpreter in attendance at this meeting.

**ITEMS FROM THE AUDIENCE** provides an opportunity for members of the public to address the Council on any subject which is not of a quasi-judicial nature or scheduled for a public hearing. (Items which may not be addressed under Items from the Audience are indicated by an asterisk\*.) The Council will receive comments on other issues, whether the matter is otherwise on the agenda for the same meeting or not. Speaker's remarks will be limited to three minutes apiece. No more than three speakers may address the Council on any one subject. However, if both proponents and opponents wish to speak, then up to three proponents and up to three opponents of the matter may address the Council.

**PUBLIC HEARINGS** are held to receive public comment on important matters before the Council. You are welcome to offer your comments after being recognized by the Mayor. After all persons have spoken, the hearing is closed to public comment and the Council proceeds with its deliberation and decision making.

#### 1. CALL TO ORDER

#### 2. ROLL CALL

#### 3. STUDY SESSION

- a. Kirkland Zoning Code Chapter 95 Amendments – Tree Management

#### 4. HONORS AND PROCLAMATIONS

- a. 2021 Park and Recreation Month Proclamation

#### 5. COMMUNICATIONS

- a. *Announcements*
- b. *Items from the Audience*
- c. *Petitions*

#### 6. PUBLIC HEARINGS

#### 7. SPECIAL PRESENTATIONS

- a. COVID-19 Update
- b. Resolution R-5434 Update

*8. CONSENT CALENDAR**a. Approval of Minutes*

(1) June 15, 2021

*b. Audit of Accounts**c. General Correspondence**d. Claims*

(1) Claims for Damage

*e. Award of Bids*

(1) 2021 Annual Striping Award

(2) 122<sup>nd</sup> Avenue N.E. Traffic Claiming Award*f. Acceptance of Public Improvements and Establishing Lien Period**g. Approval of Agreements**h. Other Items of Business*

(1) Authorize Public Art Process for Fire Station Projects

(2) Ordinance O-4761, Relating to Park Impact Fees

(3) Resolution R-5481, Authorizing the City Manager to Execute a Real Property and Sale Agreement for Acquisition of Property to Expand Juanita Heights Park

(4) Resolution R-5482, Authorizing the City Manager or Designee to Enter Into a Contract with MRM Kirkland, LLC, Regarding a Potential Multifamily Housing Property Tax Exemption, and Approving the Issuance of a Conditional Certificate of Tax Exemption

(5) Resolution R-5483, Adopting the 2020 Streets Levy Accountability Report for Proposition 1 – Levy for Streets Maintenance and Pedestrian Safety

(6) May 2021 Sales Tax Report

(7) Procurement Report

*9. BUSINESS**a. Kirkland Municipal Code Update - Marina Moorage Infractions*

**\*QUASI-JUDICIAL MATTERS** Public comments are not taken on quasi-judicial matters, where the Council acts in the role of judges. The Council is legally required to decide the issue based solely upon information contained in the public record and obtained at special public hearings before the Council. The public record for quasi-judicial matters is developed from testimony at earlier public hearings held before a Hearing Examiner, the Houghton Community Council, or a city board or commission, as well as from written correspondence submitted within certain legal time frames. There are special guidelines for these public hearings and written submittals.

**ORDINANCES** are legislative acts or local laws. They are the most permanent and binding form of Council action, and may be changed or repealed only by a subsequent ordinance. Ordinances normally become effective five days after the ordinance is published in the City's official newspaper.

**RESOLUTIONS** are adopted to express the policy of the Council, or to direct certain types of administrative action. A resolution may be changed by adoption of a subsequent resolution.

- (1) Ordinance O-4762, Relating to Moorage Compliance and Amending Section 14.36.070 of the Kirkland Municipal Code
- b. Authorize the City Manager to Enter Negotiations for Property Acquisition of the Village Plaza of Kirkland
- (1) Resolution R-5484, Authorizing the City Manager to Undertake Negotiations Related to the Potential Acquisition of Real Property of Affordable Housing Purposes

*10. REPORTS*

- a. *City Council Regional and Committee Reports*
- b. *City Manager Reports*

**ITEMS FROM THE AUDIENCE**

Unless it is 10:00 p.m. or later, speakers may continue to address the Council during an additional Items from the Audience period; provided, that the total amount of time allotted for the additional Items from the Audience period shall not exceed 15 minutes. A speaker who addressed the Council during the earlier Items from the Audience period may speak again, and on the same subject, however, speakers who have not yet addressed the Council will be given priority. All other limitations as to time, number of speakers, quasi-judicial matters, and public hearings discussed above shall apply.

- (1) Legislative Request Memoranda
  - (a) Busking in Parks Right-of-Ways and Commercial Areas
- (2) Eastrail Regional Advisory Council Draft Memorandum of Understanding
- (3) Calendar Update

*11. ITEMS FROM THE AUDIENCE*

*12. EXECUTIVE SESSION*

*13. ADJOURNMENT*

**EXECUTIVE SESSIONS** may be held by the City Council only for the purposes specified in RCW 42.30.110. These include buying and selling real property, certain personnel issues, and litigation. The Council is permitted by law to have a closed meeting to discuss labor negotiations, including strategy discussions.



**CITY OF KIRKLAND**  
**Planning and Building Department**  
123 5th Avenue, Kirkland, WA 98033  
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## **MEMORANDUM**

**To:** Kurt Triplett

**From:** Adam Weinstein, AICP, Planning and Building Director  
Jeremy McMahan, Planning and Building Deputy Director  
Deb Powers, Urban Forester

**Date:** June 24, 2021

**Subject:** DRAFT CODE AMENDMENTS, KIRKLAND ZONING CODE CHAPTER 95  
TREE MANAGEMENT AND REQUIRED LANDSCAPING  
FILE NUMBER CAM18-00408

### **RECOMMENDATION:**

It is recommended that City Council discuss general policy direction of Kirkland Zoning Code Chapter 95 ([KZC 95](#)). This Council discussion is not intended for a comprehensive review of the code but is intended to focus on broader substantive issues that will help inform a general framework for developing a draft code in advance of its consideration and possible adoption.

### **BACKGROUND DISCUSSION:**

The removal of tree canopy cover in urban areas has resulted in the loss of beneficial functions that trees provide to the public. Tree ordinances are one of the ways cities balance urban growth with fostering a sustainable community. Kirkland's tree code (KZC 95) establishes a permit process and standards for the protection and replacement of trees, mainly on private property. While tree regulations add cost and plan review complexity to the development process, growth and development continue at a brisk pace. The current tree code does not stop tree removal related to building on private property, nor does it allow people to indiscriminately cut down trees in Kirkland.

The code functions to simultaneously respect private property rights and protect Kirkland's tree canopy while accommodating significant residential and commercial growth anticipated in Kirkland's land use policies and regulations. The goals are often in conflict – the best tree retention strategy would be to preclude tree removal and the best development strategy would be to not require tree retention. This inherent tension is complicated further by regulating rates of tree removal, retention and planting over short- and long-term horizons. Because KZC 95 was last updated in 2010, this code amendment project has presented an opportunity to review code effectiveness, ensure the code is relevant and consistent with best available science, and that KZC 95 aligns with the community's vision.



Updating Kirkland's tree code is an important project identified in the 2018 (and subsequent) Planning Work Programs, the 2014-2019 Citywide Urban Forest Work Plan<sup>1</sup>, and more recently in Kirkland's Sustainability Master Plan<sup>2</sup>.

Additional project sequencing, background information and many of the questions discussed below are described in more detail in the May 18, 2021 City Council meeting staff memo<sup>3</sup>.

At the May 18 City Council meeting, the Council decided to "step back" and discuss the desired outcomes from the process at a high level. The Council requested that general questions asking for general policy direction be emailed to each Councilmember, who would individually provide their responses directly to staff.

This memo poses those same high-level questions on the tree code's general policy direction below. Having considered various policy directions and their effects, the Council is asked to discuss these questions as a group at its meeting and provide staff with an initial consensus or majority response to help establish a framework that could lead to KZC 95 code changes. With a majority response to the questions below, staff will return with a code framework that meets Council's needs and that supports the development of a final draft code.

Councilmember responses to staff were not circulated prior to the July 6 Council meeting discussion. The compiled responses to these questions will be made available for review at the start of July 6 study session. In addition to these responses, Councilmembers have articulated their individual perspectives on KZC 95 at prior City Council meetings, Council Committee meetings, and retreats over the 3-year course of this project. The totality of this input, including Councilmember responses, has shaped the "staff recommendations" under each question below.

### **GENERAL POLICY DIRECTION:**

#### ***1. Does the current code need a major update as proposed, or just minor amendments such as adjusting definitions and code clarifications?***

Discussion: Most of the proposed code changes are relatively minor code amendments that clarify the intent and administration of the regulations. However, to increase the certainty (also referred as code "predictability") with development permit review outcomes, some of the draft codes result in relatively major, complex code changes that can make the code more difficult to administer or change the outcomes, resulting in more tree removal. Staff would generalize the "Levels" of code changes according to the impact of the proposed code modifications as follows:

- No impact - to address typos and redundancies; clarify, simplify or further define something already in the code, simplify formatting or remove outdated references.

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<sup>1</sup> [Citywide Urban Forest Work Plan 2014-2019](#), Objective 4.3 Update Tree Codes, page 5.

<sup>2</sup> [Sustainability Master Plan](#), Natural Environment + Ecosystems Focus Area, page 40.

<sup>3</sup> [May 18, 2021 City Council meeting staff memo](#), pages 1-2.

- Minor - updates Best Available Science, Best Management Practices, industry standards, etc. without an increase in requirements or changes to code intent.
- Moderate - restructuring of code sections and any of the above that results in new, increased or eliminated requirements that are relatively uncontroversial.
- Major - substantially new, increased or eliminated requirements, added procedures or cost to permit applicants. Changes the impact of the code significantly on either development or tree retention.

One example of a “major” code amendment involves modification of the existing code provision that requires tree retention in setbacks. In the updated draft code, specific building envelope dimensions require measurements and calculations that are not practical/simple for all users, may complicate development feasibility studies, and that increase plan review procedures and possibly design costs. The Landmark tree concept and increased tree removal allowances are also “major” code amendments.

*Staff recommendations:* Maintain the current code structure and make minor to moderate adjustments to the code with clarifications and improved definitions, such as tree condition ratings, groves, and simple terms describing the location of trees required to be retained, etc. As discussed in the sections below, staff recommends major updates related to new regulations for Landmark trees.

*City Council Discussion and Decision:* Should the range of tree code updates being considered by the Council be reduced/simplified to exclude most major updates to the code?

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## ***2. What is Council’s desired outcome from an amended tree code?***

*Discussion:* For guidance in considering code update outcomes, the initial KZC 95 project scope included three primary objectives:

- Support the policy goals established in Kirkland’s Comprehensive Plan and the objectives in the Urban Forestry Strategic Management Plan (UFSMP).
- Address issues and challenges that have arisen since the last tree code revision.
- Update the code so that it is effective and practical to use.

The stated objective of the amendment in the UFSMP was to update the tree code to “simplify & clarify,” with a goal to “protect, maintain and enhance the urban forest.” The relevant Comprehensive Plan goals are:

- *Strive to achieve a healthy, resilient urban forest with an overall 40 percent tree canopy coverage.*
- *Provide a regulatory framework to protect, maintain and enhance Kirkland’s urban forest.*
- *Balance the regulatory approach with the use of incentives, City practices and programs, and public education and outreach.*

These objectives seem to align with previous Council discussions and input that emphasized canopy retention/restoration, code clarification and simplification, and pursuit of creative public and private tree planting initiatives.

Feedback from public outreach efforts, a public hearing, significant input from stakeholders and staff code administrators identified the issues and challenges that have arisen since the 2010 code revision. These challenges are primarily associated with code clarity and simplicity while at the same time a desire for increased code predictability and a somewhat more prescriptive code. As noted above, increases in code predictability can reduce code flexibility and simplicity: what may be effective and practical for a well-seasoned developer may not be for a property owner or less-experienced contractor.

*Staff recommendations:* Simplify and clarify the current code consistent with minor/moderate code amendments (Question 1):

- Increase readability with better definitions/terminology and removing any unnecessary code language.
- Streamline overly complicated code provisions and consider plates/tables where possible.

Consider measures that result in the same or greater tree retention on development sites as the current code (Question 6) and meet policy goals with code amendments that incrementally increase tree canopy citywide. Based on the outcome of legal options available, allow replanting elsewhere, such tree banks and fee-in-lieu of on-site tree planting.

Consider not pursuing moderate/major changes in the draft code with effects that do not meet project objectives or policy goals, such as increased tree removal allowances that are not offset by other retention efforts (Question 4).

*City Council Discussion and Decision:* What is Council's desired outcome from the amended tree code?

### ***3. Does the Council feel the problems with the current tree code are related to trees lost with development, or with private property tree removals?***

*Discussion:* The majority of concerns from Kirkland residents relate to tree removal with development. That makes sense since development sites often result in highly visible, sudden, and dramatic changes to the environment. Development also has a measurable impact on tree canopy as tracked by the City's most recent canopy assessment. Private property tree removals tend to be more incremental and not to result in the stark changes that occur with development. However, those smaller-scale removals also contribute to canopy loss. An effective tree code needs to address both contributors to canopy loss and ensure that the regulations work in concert toward the City's policy objectives. That being said, tree retention standards on development sites *and* limits on property owner tree removals demonstrably:

- Slows canopy cover loss and ensures a multi-aged urban forest.
- Supports UFSMP objectives and the City's policy goals.

- Meets the project objective to address issues and challenges that have arisen since the last code revision (tree canopy cover loss).

Relative to the current code, the draft code results in greater tree removal than the current code (see Question 4 below).

*Staff recommendation:* Considering that both tree removal scenarios are linked to the loss of tree canopy cover, and given both the limitations of increasing tree retention on development sites (Question 5) and the desire to allow tree removals in proportion to property size (Question 4), the updated code should aim to both maximize tree retention on development sites *and* limit property owner tree removals, with proportional changes based on property size, to meet canopy cover goals.

*City Council Discussion and Decision:* Does the Council feel the problems with the current tree code are related to trees lost with development, or with private property tree removals?

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#### ***4. Does the Council want to provide more flexibility to private property owners to remove (more?) trees from their property?***

*Discussion:* The draft code allows more property owner tree removals than the current code<sup>4</sup>. Kirkland's private property tree removal allowance is fairly standard or even generous compared to other municipalities. Currently, tree removal allowances and approved tree removal permits account for approximately 1,200 trees removed annually.

As discussed in Question 3, the draft code balances greater tree removal allowances, hedge removals and increased tree removals on development sites (Attachment 1) with limited property owner Landmark tree removals, recognizing that Landmark tree protection on development sites is difficult from both an arborist's and an architect's point of view (Question 5) and may not result in long-term protection under a 5-year maintenance agreement.

*Staff recommendation:* If the Council concurs with the direction of the draft code to allow more tree removal for larger properties, the canopy loss can be mitigated by:

- Reconsidering hedge removals.
- Limiting property owner Landmark tree removals (Question 5).
- Increasing annual tree removal allowances more conservatively than the draft code.
- Requiring tree replanting elsewhere.

While not immediately mitigating canopy loss, the following actions can foster an expanded tree canopy on private property:

- Ongoing education and outreach to help inform the community on the purpose of Kirkland's tree code and the benefits of trees.
- Tree planting programs and incentives for private property owners to preserve trees.

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<sup>4</sup> Scenario Example, Code Result and Other Options are provided in the May 18, 2021 staff memo, Code Change 1, page 3.

*City Council Discussion and Decision:* Does the Council want to provide more flexibility to private property owners to remove (more?) trees from their property?

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***5. Should big (Landmark) trees have higher retention standards on development sites than other trees? Be protected on non-development sites?***

*Discussion:* Comprehensive Plan Policy E-2.1 articulates that a healthy, sustainable urban forest “consists of diverse tree ages and species, both in native and planted settings. Larger, mature trees should be maintained and protected, as the greatest benefits accrue from the continued growth and longevity of larger trees.”

With development scenarios, it is substantially more difficult to successfully retain larger trees because they require large root protection areas. The current code already functions to retain large trees at the perimeter of lots from construction impacts while allowing the full development potential that zoning dictates.<sup>5</sup> A special designation for certain-sized trees likely would make little difference unless there are:

- Changes to development regulations, like increasing setbacks, reducing maximum lot coverage, etc.
- Requirements to substantially change proposed building designs.
- Changes to the design process for certain development types such as short plats, subdivisions and multi-family projects (discussed under staff recommendations).
- Canopy restoration requirements for when landmark trees are removed.

Given the limitations to protecting large trees in the majority of development scenarios, other measures to protect large trees have been considered, such as:

- Altogether prohibit/ban property owner Landmark tree removals, much like trees in critical areas.
- Preserve in perpetuity Landmark trees that were protected with development (similar to groves) that could otherwise be removed after 5-year maintenance agreements expire.
- Limit the number of property owner Landmark tree removals within a given period of time, as proposed in the draft code (at lower rates than the current allowance of 2 at the same time within 12 months).

*Staff recommendation:* Landmark trees should be defined and assigned a new and high retention standard. That standard is most likely to be effective at preserving these larger trees with larger single-family property development (over 15,000 square feet), short plats, subdivisions; require the Integrated Development Plan (IDP) permit review process so that large tree retention decisions can be made early in the design phase, prior to investments in infrastructure configuration (see Question 6/Staff Recommendation). In addition, the code should allow or require clustering of lots/building sites in order to provide more design flexibility to retain trees. For multi-family developments, require a presubmittal meeting with arborists in attendance and preliminary tree information so that similar infrastructure and project layout decisions occur early in the design process.

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<sup>5</sup> Scenario Example, Code Results and Other Options provided in the May 18, 2021 staff memo, Code Change 3, page 5.

Limit Landmark tree removal in non-development (property owner) tree removal scenarios and require a permit for their removal (as an "allowance," the requested courtesy notification prevents tracking and administering replacements).

*City Council Discussion and Decision:* Should big (Landmark) trees have higher retention standards on development sites than other trees? Be protected on non-development sites?

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***6. Should the updated tree code require more retention of trees on development sites than the current code?***

*Discussion:* The current tree code does a good job of requiring tree retention in required setbacks. Compared to the current code, the draft KZC 95 is expected to result in greater tree removal and less tree retention on development sites, in the interest of clarity and predictability, by focusing on retaining trees with minimum condition and size standards.

*Staff recommendation:* If Council concurs that the updated code should result in *the same tree retention* rates as the current code, the following measures would apply:

- Broaden the revised grove definition to include trees between 6-12 inches in trunk diameter, consistent with the current code.
- Include "fair"<sup>6</sup> condition trees with Tier 2 tree retention to increase tree retention on development sites, consistent with the current code.

If Council concurs that the updated code should result in *increased tree retention* on development sites than the current code allows, in addition to the previous measures, the following would apply:

- Adopt standards for landmark trees as discussed in policy direction Q.5 above.
- To slow the loss of canopy cover that was previously protected on development sites, limit Landmark tree removals after 5-Year Maintenance Agreements expire (Question 5/Staff Recommendation).
- Mandate the IDP development review process for short plats and subdivisions citywide (currently required in the Holmes Point Overlay area), allow and or require clustering of lots for short plats and subdivisions, and consider applying presubmittal review requirements to multi-family developments.
- Leverage private and public resources with a city program for canopy restoration.

*City Council Discussion and Decision:* Should the updated tree code require more retention or the same retention of trees on development sites than the current code?

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<sup>6</sup> Excerpt from the draft definition of "fair" condition trees: A single defect of a significant nature such as a trunk cavity or multiple moderate defects such as large girdling roots, trunk damage, evidence of decay that are not practical to correct or would require multiple treatments over several years...

***7. In addition to unavoidable tree removal with development (i.e., within building envelope), should some/all remaining trees be allowed to be removed if they are mitigated?***

*Discussion:* There continues to be discussion of allowing unrestricted removal of trees on development sites if removed trees are somehow mitigated through replanting. This results in significantly accelerated canopy loss in the near- and mid-term with the hope of long-term canopy offsets. While it makes sense to plant trees to ensure future canopy cover, it is important to have a mix of old and new trees to provide an even succession of benefits over time. Even with considerable replanting efforts, new nursery-sized replacement trees do not begin to contribute benefits for 10-20 years, which is why it's important to *balance* the retention of healthy trees with planting new trees.

*Staff recommendation:* To slow the loss of canopy cover city-wide, staff does not recommend allowing the removal of trees that would be candidates for retention from development sites. The city can also:

- Provide ongoing education around new tree planting and landscape management.
- Improve public tree maintenance.
- Implement tree planting programs applicable to public and private property.

*City Council Discussion and Decision:* In addition to unavoidable tree removal with development (i.e., within building envelope), should some/all remaining trees be allowed to be removed, if they are mitigated?

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***8. Does the Council prefer certain mitigation options for trees removed on development sites, such as:***

- a) On-site tree replanting?*
- b) Off-site replanting supported by fees-in-lieu of planting?*
- c) Off-site replanting in specified locations using a formal "tree banking" system?*
- d) Other mitigation options?*

*Discussion:* The current code establishes an order of priority for mitigating trees removed with development: plant on the development site first, then plant at another "approved location in the City," and finally payment of fees in-lieu of planting after the first two options are "explored in depth". Fees in-lieu must be deposited into the City Forestry Account (CFA)<sup>7</sup> and used for specific purposes, one of which is citywide tree planting<sup>8</sup>. The CFA has been used to match grant funding for urban forestry projects such as the Parks tree inventory, the 2010 tree canopy assessment and the Urban Forestry Strategic Management Plan. More recently, CFA funds support Green Kirkland Partnership efforts to increase canopy cover in Park open spaces. With a limited revenue source and multi-departmental urban forestry-related expenditures, the CFA is somewhat manageable to administer.

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<sup>7</sup> KZC 95.33(3)(c).

<sup>8</sup> KZC 95.57.2

A “tree bank” involves setting up a new, comprehensive program in which specific areas would be designated for off-site tree planting. Staff is currently examining the legal implications of establishing an off-site mitigation program with the implementation of the Urban Forestry 6-Year Work Plan (Question 9). Some of the legal implications include whether fees incurred from tree removal on private property can be banked to use with public property tree planting, if banked fees must be used within a certain time period, and what it would look like to legally and procedurally administer a “banking” program. It is difficult to estimate the precise timing of the program launch as substantial additional work is needed to design the program, develop a capital facilities program, and determine the actual capacity for the City to fully mitigate continued canopy loss.

The Council has inquired about the possibility of mitigation standards for removal of right-of-way trees associated with development. Distinct from the potential legal limitations noted in Question 9 below, the City Attorney’s office has indicated that additional mitigation standards and a fee-in-lieu approach is likely defensible given that right-of way trees are public assets.

***Staff recommendation:*** Continue to mitigate trees lost through development on private property through on-site tree retention and replanting. If legally defensible, pursue a strategy where trees removed from private and/or public property development projects that cannot be replanted on site are offset through a formal mitigation program. Dedicate funding to increase canopy cover through public tree planting initiatives, incentive programs and education/outreach. Explore measures for development projects resulting in extraordinary tree removal (defined by a threshold) that can be mitigated through a capital tree planting program.

In prior discussions, Council has considered appropriate mitigation for Landmark trees removed on development sites. Staff recommends that planting on-site be pursued first (consistent with Question 7) or in combination with payment of in-lieu fees that support a tree bank program, if implemented.

***City Council Discussion and Decision:*** Does the Council prefer certain mitigation options for trees removed on development sites?

***9. Should the revenue generated from fees-in-lieu of planting on development sites be used to fund city-wide tree planting programs?***

***Discussion:*** See Question 8/Discussion on the City Forestry Account. Although the current code supports a fee-in-lieu option, the majority of CFA account funds are the result of civil penalties from unauthorized tree removals, which may be further legal justification to keep “tree bank” funds separate. Collection of in-lieu fees is limited by State law (RCW 82.02.020), so a tree bank option will require additional research by the City Attorney’s office. If this option is available, Council could consider proactive measures with dedicated funding to increase canopy cover lost through development, support ongoing tree planting initiatives and public education/outreach on the benefits of trees. Other revenue sources such as those discussed in the UFSMP<sup>9</sup> should also be considered.

<sup>9</sup> [Urban Forest Strategic Management Plan](#), Section 4.2, Potential Funding Sources, page 38-40.



Note that reevaluating the use of new or existing urban forestry-related funds is a budgeted project through the approval of a 2021-2022 Service Package Request.<sup>10</sup>

*Staff recommendation:* If legally defensible, pursue new revenue sources to fund city-wide tree planting programs.

*City Council Discussion and Decision:* Should the revenue generated from fees-in-lieu of planting on development sites be used to fund city-wide tree planting programs?

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***10. Should onsite planting standards for new development use tree credits, % of trees required, type of trees, and/or planting objectives (reduce heat island, mitigate storm water run-off, provide habitat)?***

*Discussion:* There are pros and cons for different planting standard systems. Prior to the adoption of Kirkland's tree code, 25 percent of existing trees on short plat developments were required to be retained. Although a simple, straightforward requirement, it became apparent that often, the retained trees were of poor quality or newly-exposed forest trees susceptible to windthrow. The current tree code uses retention values as a standard for tree retention and a credit system as a standard for replanting. Retention values addressed tree quality issues. Credits are based on the premise that trunk diameter, as a general indicator of tree size, translates (albeit indirectly) to canopy cover. Tree credits are units that account for the biomass of trees per acre. It applies to both counting existing trees and as a minimum replanting requirement. Other cities that have adopted a tree credit system include Olympia, Vancouver, WA, Issaquah, Medina, Kenmore, and Woodinville. The City of Renton found credits too complicated to administer and revised their tree code to a simple 1:1 removal-to-replacement approach, which doesn't account for the biomass of what was removed versus planted.

Additional planting standards and objectives that have been discussed are:

- Requiring specific canopy cover on a neighborhood or lot-by-lot basis
- Requiring specific conifer-to-deciduous ratios (30% conifer to 70% deciduous).
- Requiring tree species with large canopy cover at maturity
- Requiring native tree species (Douglas fir, Bigleaf maple, Western red cedar, etc.)
- Applying regulations based on ecosystem services such as mitigating urban heat effects, stormwater mitigation, etc.

While establishing specific performance measures, the drawbacks of focusing on these planting standard objectives are increased code complexity, limited opportunities for increasing species diversity, overcrowded/inappropriately located trees, infrastructure conflicts, and limiting property owner discretion for tree selection. A measuring and monitoring program must be in place to track the effectiveness of tree codes with specific ecosystem service outcomes. The staff memo for the May 18, 2021 City Council meeting addresses policy implications of KZC 95 amendments on tree canopy goals.<sup>11</sup>

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<sup>10</sup> Formalization and Enhancement of Tree Bank, Service Package Request #21BP15.

<sup>11</sup> [May 18, 2021 City Council staff memo](#), page 10.

***Staff recommendation:*** Staff recommends continuing with current tree credits system for planting requirements (with potential tree credit increased). Staff also recommends using code incentives and tree planting programs to plant native trees, conifers, and large-at-maturity trees, rather than requirements. Many native conifers and large-at-maturity tree species are inappropriate for small to average sized lots (the current code incentivizes native conifer retention by awarding additional credits). There are ongoing debates about what the “new native” looks like - what was native 100 years ago is likely to continue to shift in hardiness, along with the habitats that native trees support. In many ways, adhering to a native plant palette promotes a monoculture susceptible to pests/disease, versus increasing species diversity.

While alternative or additional planting standards and objectives as discussed above are all very worthwhile, staff is cautious with increasing code complexity with the major code changes involved with increased or targeted tree planting requirements (Question 1). The new draft condition ratings address tree quality, while the draft code further clarifies the application of the tree density credit system currently in use. If Council agrees, the tree density credits per acre can be increased incrementally by lot size. For example, smaller lots could have the same 30 credits per acre, (which equates to 6 new trees in an average-sized treeless lot), while the tree density credit requirement for larger lots could be higher. Higher credit requirements on larger lots will result in both greater tree retention and replanting.

***City Council Discussion and Decision:*** Does Council have a preference for certain onsite planting standards for new development? For example, tree credits, % of trees required, type of trees, and/or planting objectives (reduce heat island, mitigate storm water run-off, provide habitat)?

***11. Should we reduce tree mitigation requirements for residential development projects that meet a minimum standard of affordable housing (e.g., projects that include units that are affordable to households with incomes at or below 60% of Area Median Income)?***

***Discussion:*** There is a perception that tree retention/mitigation requirements are a barrier to affordable housing development, when there are few, if any conflicts between the two. For example: the current code aims to retain high-quality trees located in setbacks, essentially unbuildable areas. An ADU is an added footprint, no different than the building footprint of the main structure. If a tree was located in the middle of a proposed ADU footprint, it would have to be removed to allow the property owner the reasonable use of their property. If the tree was located outside the building footprint, in a setback and the property configuration allowed, KZC 95 works to have the permit applicant adjust the proposed plan to retain high-quality trees, the same as the code functions with the primary building footprint. The draft code helps to further clarify which trees should be retained. The code streamlining measures described in Question 6 also apply to affordable residential housing types.

***Staff recommendations:*** We suggest alternative means of making it easier to develop affordable housing. Reducing the number of trees, including mature trees, within lower-income housing areas projects could disadvantage residents who live in these areas. A project on the Sustainability Master Plan (EV-10.4) aims to identify areas in Kirkland with low canopy cover

associated with social disparities and adverse environmental conditions. In the meantime, tree retention is just as important with the development of affordable housing.

*City Council Discussion and Decision:* Should we reduce tree mitigation requirements for residential development projects that meet a minimum standard of affordable housing (e.g., projects that include units that are affordable to households with incomes at or below 60% of Area Median Income)?

## ***12. What "best professional judgement" questions do you have for staff that would help your decisions?***

Many of the Councilmember's questions below are addressed in this memo. Below are paraphrased requests for staff recommendations or additional information that would help with decisions related to the tree code amendment project.

Staff requests that Council review the questions below for accuracy and to inform staff if corrections are needed or if we missed anything in our responses.

1. What are the long-term impacts on tree canopy with the proposed code changes? Are short-term losses with development recovered through mitigation, re-planting, etc.?

*Staff response: short-term losses versus long-term impacts of proposed code changes are shown in Attachment 1 in the May 18, 2021 City Council meeting packet, in the "Effects" and "Factors Considered" columns for proposed code changes.<sup>12</sup>*

2. If more trees will be lost through development, what goals should we aim for (preserve more significant/landmark trees, improve tree canopy quality in 20 years, etc.)?

*Staff response: We can provide consistent and efficient citywide urban forest management by implementing the Urban Forest 6-Year Work Plan. We'll continue to monitor our canopy cover (the 2-D outline of tree leaves as seen from above) in addition to the expanded policy goals for improving canopy quality<sup>13</sup> by considering these management objectives wherever we can:*

- *Species diversity – more variety lowers the risk of losing entire tree populations.*
- *Varied tree age/size – so that old and new trees provide an even succession of benefits over time.*

*See staff's response to Question 13 below for ways to implement these objectives.*

3. How can we achieve the 40% goal across the city (ideally, with native trees)?

*Staff response: see General Policy Question 10 above regarding native trees. When looking at the pre-annexed city boundary from 2002 to 2018, Kirkland's canopy cover is not fluctuating dramatically, as described in a This Week in Kirkland article.<sup>14</sup> We can continue to measure/monitor canopy cover and other data (such as our field study on the efficacy of KZC 95), look for any emerging issues, then consider strategies to respond to trends in*

<sup>12</sup> [May 18, 2021 City Council meeting](#) packet, Attachment 1, e-page 11.

<sup>13</sup> [Kirkland Comprehensive Plan](#), Policies E-2.1 through E-2.4

<sup>14</sup> [This Week in Kirkland](#), Check-in with the Tree Code Update, March 28, 2018

*canopy gain/loss such as adjustments to the code, implementing the 6-Year Urban Forest Work Plan, incentives and public education on why trees are important.*

4. Can code simplicity/clarity be achieved while reducing polarizing elements?

*Staff response: Code simplification and clarification are discussed under the General Policy Direction section above, Questions 1 and 2. As evidenced by the time devoted to this project and with comparisons to prior work on tree ordinances in other cities, tree codes tend to involve polarizing elements. Council will need to find a balance between diverse opinions about the effects of the code.*

5. What may be the unintended consequences of encouraging diverse housing type development to provide for affordable housing (and its effect on tree canopy cover?)?

*Staff response: see General Policy Question 11 above. But the code changes that allow more diverse housing options on single-family lots can result in less tree retention if the total building footprint is larger than the previously allowed one single-family home. (Example – A new home with a detached ADU will have a larger footprint that may result in less tree retention.)*

6. Are there case studies/examples of similar-sized cities with tree codes that balance inevitable development with maintaining/increasing tree canopy?

*Staff response: For this project, we examined specific elements in other municipal tree codes, such as Landmark trees, requirements for replanting etc. Staff compiled data on other city's canopy goals and their current canopy status (UFSMP). Most cities that have tree codes also have canopy goals and struggle with the same issues of accommodating growth while maintaining/increasing tree canopy.*

7. What is your recommendation on how to create code that helps us accomplish not only our canopy goals, but our environmental and environmental justice goals?

*Staff response: To accomplish our canopy goal, the Council can review the data of past performance and adjust the code accordingly. We recommend at the very least trying to end up with the same level of retention/removals as the current code and add aggressive tree planting programs for private and public property trees.*

8. How can we be creative and be a community leading the way in urban forest management?

*Staff response: In many ways we already are, but just like any other program, the effectiveness of the City's overall UF management is related to support and financial resources.*

9. How can we manage the tension between saving our tree canopy and creating more affordable housing?

*Staff response: see General Policy Question 11 and the response to Question 5 above.*

10. Are we requiring the right trees to be planted on properties? (concerned that developers default to deciduous and ornamental trees).

*Staff response: Our Field Study showed the issue with new tree planting is a) too many arborvitae and b) trees planted in inappropriate locations. In the draft code, we do not allow credits to be awarded for arborvitae planted on development sites and clarified suitable tree locations. Staff does not have a problem with ornamental trees because they*

*provide species diversity, however planting exclusively dwarf trees do not meet the intent of the code and is addressed in a draft code clarification (See General Policy Question 10).*

11. How can we maintain wildlife habitat throughout the city so that native wildlife can move safely?

*Staff response: Retaining large trees can be beneficial to a significant number of native and migratory birds, support restoration efforts in open space areas, support private and organizational efforts to acquire land that supports habitat, like the Goat Hill trail, provide public education materials that encourage property owners to think twice about tree removal on private property, create a backyard wildlife habitat and promote Kirkland's Community Wildlife Habitat program, etc.*

12. How can tree code amendments meet (or exceed!) our SMP goal of achieving 40% tree canopy by 2026?

*Staff response: See Question 10. Canopy restoration tends to be a mid-to-long term perspective. Rapid canopy loss is not quickly mitigated by new tree planting<sup>15</sup>, so it will take tree code adjustments for greater effectiveness in addition to other strategies, or "tools in the toolbox" as described in this short *This Week in Kirkland* article<sup>16</sup>.*

13. How we can best diversify our trees in terms of age and appropriate species?

*Staff response: We can retain large trees on development sites and slow the loss of mature canopy resulting from property owner tree removal (Landmark tree protection). We can update our street tree inventory and manage public trees with age and species diversity objectives in mind. Species diversity is difficult on private property, although we can incentivize tree planting.*

14. How can we meet/exceed canopy goal and balance individual property rights, while increasing affordable housing?

*Staff response: Finding a balance that is appropriate to this community continues to be the fundamental challenge of this process. The discussion questions posed above will facilitate Council's search for the appropriate balance. As noted above, it is not evident that tree regulations are a significant driver of housing affordability and lessening tree canopy in more affordable communities is not an equitable outcome.*

15. How can we identify trees unambiguously that are critical to stability of steep slopes or for the protection of wetlands and aquifer recharge zones, i.e., objective determinations based on science that are 100% predictable and reproducible?

*Staff response: KZC Chapter 85 is the appropriate code to protect life and property in geologically hazardous areas. Chapter 85 relies on qualified professionals to assess site specific features (soils, slopes, hydrology, vegetation, etc.) to make site specific development recommendations. Similarly, KZC Chapter 90 is the appropriate code to protect streams and wetlands. Chapter 90 unambiguously protects trees in these critical areas except for hazard or invasive trees. Both chapters have been updated to be consistent with best available science while the KZC 95 regulations have been under consideration.*

<sup>15</sup> [This Week in Kirkland](#), Tree Code Update: The Importance of Preservation, April 11, 2019.

<sup>16</sup> [This Week in Kirkland](#), What's in Our Toolbox? March 20, 2019.

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**REVIEW:**

We will want to confirm that Council expectations for staff are to establish a code framework that consists primarily of minor code amendments with some modest amendments in key places and a major amendment related to Landmark trees. Does Council agree with that statement?

**NEXT STEPS:**

With majority or consensus responses from Council on these broad framework questions, staff will bring back a code framework that reflects the Council's general direction for code changes to KZC 95. If the code framework is agreeable to Council, staff will develop a draft code that reflects the general policy direction framework. Note that substantive changes to the draft code may warrant additional public comments and/or hearings.

KZC code changes involve comprehensive implementation phases. Prior to adoption of KZC 95, staff will be seeking additional direction from the City Council on effective dates and options related to vesting of projects.

**Attachment**

1. Effects Matrix







cc: File Number CAM18-00408  
Planning Commission  
Houghton Community Council

**Kirkland Tree Code Update  
Effects – Guide to General Policy Direction**

See Key Below

Revised June 28, 2021

Attachment 1

CURRENT CODE	DRAFT CODE <sup>1</sup> <i>Pros &amp; Cons</i> <sup>2</sup>	WHAT THE DRAFT CODE DOES	DRAFT CODE EFFECT <sup>3</sup>	STAFF RECOMMENDATION
<b>Tree removal allowance</b>  Allows 2 tree removals per 12 months on any size property, without a permit.	<b>INCREASE tree removal allowance according to property size</b> + More equitable with larger properties + Balances limited Landmark tree removal + No permit required (notification is more streamlined) - Cannot track specific tree removal data - Major code amendment	Allows greater tree removals without a permit: 2 removals for lots <10,000 sq. ft 3 removals for lots 10,001-20,000 sq. ft 4 removals for lots >20,001 sq. ft		Do not increase tree removal allowances, or offset canopy loss with other retention efforts: • Reconsider hedge removals • Limit property owner Landmark tree removals • Increase removal allowances more conservatively than the draft code
<b>Property owner tree removal – Large hedge removal</b>  The current code limits tree removal to 2 trees per 12 months the removal of overgrown hedges.	<b>ALLOW overgrown hedge removals</b> + Balances Landmark tree removal limits + Requires 1:1 replacements + Will provide even succession of benefits <u>over time</u> - Greater number of allowed tree removals at one time + Moderate code amendment	Provides a mechanism to exceed allotted removal allowances to remove >6" DBH trees forming a hedge. Permit required.		Do not allow hedge removals that will result in greater tree removal than the current code
<b>Property owner tree removal - Mitigation</b>  Mitigation for property owner tree removals is not triggered until the last 2 trees on the property are removed.	<b>INCREASE number of replacement trees and the minimum number of existing trees that must remain on larger properties</b> + Opportunity to increase species diversity - Offsets increase tree removal allowances <u>over time</u> + Moderate amendment	Requires 1:1 tree replacement when removals on larger properties include the last 2, 3, or 4 existing trees.		Increase tree replacement requirements, and: • Provide ongoing education/outreach • Create incentives for property owners to preserve trees • Develop tree planting programs for private property
<b>Property owner tree removal - Large/mature trees</b>  No special protection with property owner tree removals.	<b>DEFINE new Landmark tree category</b> <b>LIMIT property owner Landmark tree removals</b> + Define by size (and condition for development scenarios) + Slows removal of Landmark trees previously protected with development, when 5-Year Maintenance Agreements expire + HCC compromise to limit vs. prohibit Landmark tree removals + Offsets increased tree removal allowances <u>immediately</u> + Can track Landmark tree removal/replacement data - Major code amendment	• Defines large, healthy trees • Limits Landmark tree removal to 1 per 24 months • Requires a permit		Slow the loss of canopy cover resulting from property owner large/mature tree removal • Define Landmark trees • Limit property owner Landmark tree removal
<b>Tree retention with development - Large/mature trees</b>  Retain on development sites where practicable.	<b>DEFINE Tier 1 trees: Landmark trees and groves</b> <b>PROTECT Landmark trees on development sites</b> + May improve retention on clustered SPLs/SUBs and larger lots + No change in large tree retention on small to average lots - Retaining large tree/critical root zones on average lots with minimum 50% lot coverage will continue to be a challenge - Major code amendment	Provides higher level of tree protection for minimum 30" DBH Landmark trees in good-excellent health with development		Protect Landmark trees with development as proposed for a slight increase in Landmark tree retention with larger lots, IDPs, clustering, etc., however, efforts may be neutralized by property owner removal allowances.
<b>Tree retention with development - Condition</b>  High/Moderate Retention Value Trees	<b>DEFINE Tier 2 trees by condition</b> + More predictable code outcomes + Greater code clarity - Slightly less tree retention by excluding "Moderate Retention Value" trees	• Clearly defines tree condition using industry standards in layperson terms, organized within chart format • Defined as good-excellent condition trees		For the same retention as the current code: • Include "fair" condition trees

CURRENT CODE	DRAFT CODE <sup>1</sup> <i>Pros &amp; Cons</i> <sup>2</sup>	WHAT THE DRAFT CODE DOES	DRAFT CODE EFFECT <sup>3</sup>	STAFF RECOMMENDATION
	<ul style="list-style-type: none"> <li>+ Minor code amendment</li> <li>- Significantly less tree retention without "Fair" condition tree protection</li> </ul>	<ul style="list-style-type: none"> <li>• Located in setbacks (see "Retained tree location below")</li> </ul>		
<b>Tree retention with development - Groves</b> 3 touching/overlapping significant trees (min. 6" DBH), without strict condition standards.  Protected in perpetuity.	<b>REVISE grove definition</b> + Increases code predictability and known development feasibility - Reduces age diversity of retained grove trees - Condition criteria exclude trees in fair condition - Size criteria eliminate 6-11" DBH trees + Moderate code amendment	Redefines grove by size and condition: <ul style="list-style-type: none"> <li>• Must fit good-excellent condition criteria</li> <li>• Each tree must be minimum 12" DBH</li> </ul>	↓	For the same retention as the current code: <ul style="list-style-type: none"> <li>• Define groves as minimum 6" DBH trees</li> <li>• Include "fair" condition trees</li> </ul>
<b>Tree retention with development - Location</b>  Trees located in setbacks	<b>ESTABLISH specific building envelope dimensions</b> + Greater predictability for developers - Increased code complexity for all - Increased code text - Increased difficulty at development feasibility phase - Increased design/review time applying 2 building envelope dimension standards - Major code amendment - Slightly less tree retention by excluding "Moderate Retention Value" trees	Guarantees development rights using specific building envelopes: <ul style="list-style-type: none"> <li>o Tier 1: 40'w x 40'd with contiguous/shifting 20'w x 20'd</li> <li>o Tier 2: 50'w x 50'd footprint, or Building facades greater than 50'w: the maximum footprint shall be less 10% a distance between side setbacks, etc.</li> </ul>	0	Do not specify building envelope dimensions, continue to define location as trees in setbacks, as in current code
<b>Tree retention with development – Decisions early in the design phase</b>  Integrated Development Plan (IDP) is required in HPO but optional citywide	<b>REQUIRE IDP for SPL/SUB development citywide</b> + Greater predictability for developers + Greater awareness of tree protection and removals upfront + More information available to neighbors + Greater successful tree retention with early planning + Helps to plan clustering of lots + Moderate code amendment	Citywide IDP standards will: <ul style="list-style-type: none"> <li>• Eliminate phased development review process</li> <li>• Limit tree removals that occur at various permit stages</li> <li>• Streamline modification section of code</li> <li>• Require Planning Director decision for modifications (vs. Hearing Examiner)</li> </ul>	↑	For greater tree retention on development sites: <ul style="list-style-type: none"> <li>• Require IDP citywide</li> <li>• Apply pre-submittal review requirements to Multi-Family developments</li> <li>• Allow/require lot clustering with short plats/subdivisions</li> <li>• Leverage private and public resources with City programs for canopy restoration</li> </ul>
<b>Tree mitigation with development –</b>  Priority: 1 - Retain 2 - Plant on site 3 - Plant offsite 4 - Payment in lieu of planting (City Forestry Account)	<b>CLARIFY order of tree mitigation/replanting</b> + Greater predictability for developers + Greater code clarity + No impact code amendment	Clarifies tree planting priorities in the current code	0	To further offset canopy loss, establish: <ul style="list-style-type: none"> <li>• Formal "tree bank" program to mitigate trees removed from private and/or public property</li> <li>• Public/private tree planting programs</li> <li>• Ongoing education/outreach</li> <li>• Incentives for property owners to preserve trees</li> <li>• New revenue sources to fund city-wide tree planting programs</li> </ul>
<b>Tree mitigation with development –</b>  Tree density credit requirement	<b>CLARIFY application of the tree density credit system</b> + Greater predictability for developers + Greater code clarity + No impact code amendment	Clarifies tree planting requirements in the current code	0	To further offset canopy loss: <ul style="list-style-type: none"> <li>• Use code incentives/tree planting programs for native/conifer/large trees</li> <li>• Increase minimum tree density credits per acre incrementally by lot size (major code amendment)</li> </ul>







**CITY OF KIRKLAND**  
**Department of Parks & Community Services**  
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[www.kirklandwa.gov](http://www.kirklandwa.gov)

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## **MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Lynn Zwaagstra, Director of Parks and Community Services  
Sara Shellenbarger, Recreation Manager

**Date:** July 6, 2021

**Subject:** Park and Recreation Month Proclamation

## **RECOMMENDATION**

That the Mayor proclaim the month of July "Park and Recreation Month" in Kirkland.

## **BACKGROUND DISCUSSION**

Since 1985, the National Recreation and Park Association has designated the month of July as "Park and Recreation Month" to promote building strong, vibrant and resilient communities through the power of park and recreation resources.

The services that park and recreation professionals provide are vital for our communities — from protecting open space and natural resources to helping fight obesity and providing activities and resources for all people. This has been especially true throughout the COVID-19 pandemic. Park and Recreation Month encourages everyone to reflect on the exponential value park and recreation professionals bring to communities.

The Centers for Disease Control found that increased access to places for physical activity led to a 25.6 percent increase in people exercising three or more times per week. Living close to parks and other recreation facilities is consistently related to higher physical activity levels for both adults and youth. Moreover, parks provide a connection to nature, which studies demonstrate relieves stress, strengthens interpersonal relationships and improves mental health. By connecting community members to comprehensive programs, services and spaces, park and recreation agencies are working to dismantle systemic barriers to health, especially for people of color and low-income families, while investing in efforts that support and advance health and well-being holistically.



As leaders in building community resilience, park and recreation professionals connect community members to environmental programming, ensure healthy ecosystems, advocate for the benefits of nature and implement sustainability practices. Local park and recreation agencies like Kirkland Parks and Community Services department play a vital role in the protection of our environment through green infrastructure, maintenance of public lands, preserving wildlife habitats and more. In addition to helping connect people to nature, local parks create essential environmental stewards that advocate for and protect our most precious public resources — our land, water, trees, open spaces and wildlife – for this and future generations.

In a typical year, Parks and Community Services provides over 2,000 recreation programs for nearly 20,000 people – from preschool classes to summer camps to swim lessons for all ages, adult sports and fitness as well as senior programs and services. Our staff manages 52 parks, three swimming beaches, 58 athletic fields, 14 reservable picnic areas, two dog parks (in addition to several pop-up dog parks this summer), the North Kirkland Community Center, and the Peter Kirk Community Center and Pool.

This year's theme for Park and Recreation Month is Our Park and Recreation Story, to highlight the stories of how our communities are stronger, more vibrant and more resilient because of park and recreation areas and programs.

As part of this month's celebration, Kirkland Parks and Community Services will use social media to collect and share stories about meaningful or inspiring experiences in parks and recreation. We'll also collect park and recreation stories at the Community Centers, pop-up interviews this summer as part of the Parks, Recreation and Open Space (PROS) Plan update, and at other summer events such as the Juanita Friday Market.

Amanda Judd, Chair of the Kirkland Park Board, and Mike Holland, Vice-Chair of the Kirkland Park Board will accept the proclamation.

**Attachment A:** Proclamation



# A PROCLAMATION OF THE CITY OF KIRKLAND

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## Designation of July as Park and Recreation Month

**WHEREAS**, park and recreation programs are an integral part of communities throughout this country, including the City of Kirkland; and

**WHEREAS**, park and recreation programs are vital to establishing and maintaining the quality of life in our communities, ensuring the health of all residents, and contributing to the economic and environmental well-being of the community and region; and

**WHEREAS**, park and recreation programs build healthy, active communities, aid in the prevention of chronic disease, provide therapeutic recreation services for those who are mentally or physically disabled, and also improve the mental and emotional health of all residents; and

**WHEREAS**, park and recreation programs increase a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and crime reduction; and

**WHEREAS**, our park and recreation areas ensure the ecological beauty of our community and provide a place for children and adults to connect with nature and recreate outdoors; and

**WHEREAS**, Kirkland Parks and Community Services provides over 2,000 recreation programs, serving nearly 20,000 youth, adults and seniors annually across our 52 parks, 58 athletic fields, three swimming beaches, two community centers and the community pool.

**WHEREAS**, park and recreation areas and programs are integral components of quality of life and this July, the City of Kirkland joins the nation in the celebration of the benefits derived from park and recreation resources.

**NOW THEREFORE, I**, Penny Sweet, Mayor of Kirkland, on behalf of the City Council, do hereby proclaim that July is "Park and Recreation Month" in the City of Kirkland.

Signed this 6<sup>th</sup> day of July, 2021

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Penny Sweet, Mayor



## KIRKLAND CITY COUNCIL MEETING MINUTES June 15, 2021

### 1. CALL TO ORDER

Mayor Penny Sweet called the study session to order at 5:30 p.m. and the regular meeting to order at 7:30 p.m.

### 2. ROLL CALL

#### ROLL CALL:

Members Present: Deputy Mayor Jay Arnold, Councilmember Neal Black, Councilmember Kelli Curtis, Councilmember Amy Falcone, Councilmember Toby Nixon, Councilmember Jon Pascal, and Mayor Penny Sweet.

Members Absent: None.

### 3. STUDY SESSION

#### a. NE 85th Street Station Area Plan

Senior Planner Allison Zike introduced Mithun Partner Erin Ishizaki and Associate Becca Book, who provided an overview of the alternatives for the Station Area Plan and received Council feedback. Planning Commission Chair Angela Rozmyn shared information from the Commission's discussion and recommendation. Ms. Zike, Planning and Building Deputy Director Jeremy McMahon and Deputy City Manager Tracey Dunlap also responded to questions from Council.

### 4. HONORS AND PROCLAMATIONS

#### a. Juneteenth Proclamation

Mayor Sweet asked Deputy Mayor Arnold to read the proclamation which was accepted by Eastside Embrace Founder Nikayla Rice and Outreach Coordinator Dawn Hamid.

### 5. COMMUNICATIONS

#### a. Announcements

#### b. Items from the Audience

Catherine Cruz  
Russell Joe  
Aaron Jacobson  
Matthew Goelzer  
Gabriela Lopez  
Curtis Brown

Martin Morgan  
Stacy Duffy  
Jim Henderson  
Becky Henschman  
Tanya Dimpsey  
Carol Truex  
Jim Balkman

c. Petitions

6. PUBLIC HEARINGS

a. 2021-2026 Transportation Improvement Program

City Manager Kurt Triplett introduced Capital Projects Manager Rod Steitzer who provided an overview of the 2021-2026 Transportation Improvement Program. Mayor Sweet then opened the Public Hearing; no testimony was offered and the Mayor closed the hearing.

- (1) Resolution R-5480 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ADOPTING THE CITY OF KIRKLAND 2021-2026 TRANSPORTATION IMPROVEMENT PROGRAM."

Motion to Approve Resolution R-5480 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ADOPTING THE CITY OF KIRKLAND 2021-2026 TRANSPORTATION IMPROVEMENT PROGRAM."

Moved by Councilmember Kelli Curtis, seconded by Councilmember Jon Pascal

Vote: Motion carried 7-0

Yes: Deputy Mayor Jay Arnold, Councilmember Neal Black, Councilmember Kelli Curtis, Councilmember Amy Falcone, Councilmember Toby Nixon, Councilmember Jon Pascal, and Mayor Penny Sweet.

7. SPECIAL PRESENTATIONS

a. COVID-19 Update

City Manager Kurt Triplett provided information on recent actions related to the COVID-19 response.

b. Resolution R-5434 Update

- (1) Human Services Dashboard

Human Services Supervisor Leslie Miller provided an overview of the Human Services Dashboard and received Council direction.

## 8. CONSENT CALENDAR

### a. Approval of Minutes

- (1) May 24, 2021
- (2) May 26, 2021
- (3) May 27, 2021
- (4) May 28, 2021
- (5) June 1, 2021

### b. Audit of Accounts

Payroll: \$3,411,527.98  
Bills: \$4,183,626.82  
P-Card ACH  
SS514A Wire #339  
SS601A Wire #350  
TB0602 Checks #719990-720112  
SS603A Wire #351  
SS603A Wire #352  
SF607A Wire #354  
TB0609 Checks #720113-720227  
SS614A Wire #355  
SS614A Wire #356  
SS614A Wire #357

### c. General Correspondence

### d. Claims

### e. Award of Bids

- (1) David E. Brink Park Shoreline Renovation Project

Council awarded a construction contract to Wyser Construction Company of Snohomish, Washington, in the amount of \$1,151,831.34 via approval of the consent calendar.

- (2) Annual Street Preservation Program – 2021 Overlay

Council awarded a construction contract for the Annual Street Preservation Program (SPP), 2021 Phase I Street Overlay Project, to Watson Asphalt of Redmond, Washington, in the amount of \$1,164,697.70 via approval of the consent calendar.

(3) Annual Street Preservation Program – 2021 Slurry Seal

Council awarded a construction contract for the Annual Street Preservation Program (SPP)-2021 Slurry Seal project, to Intermountain Slurry Seal, Inc., of Reno, Nevada, in the amount of \$335,335.00. via approval of the consent calendar.

f. Acceptance of Public Improvements and Establishing Lien Period

g. Approval of Agreements

h. Other Items of Business

(1) Declaration of Surplus Vehicles and Equipment

The list of equipment/vehicles declared surplus and to be disposed of, as presented, was approved via the consent calendar.

(2) April 2021 Financial Dashboard

The report was acknowledged via approval of the consent calendar.

(3) Procurement Report

The report was acknowledged via approval of the consent calendar.

Motion to Approve the consent calendar.

Moved by Councilmember Amy Falcone, seconded by Councilmember Kelli Curtis

Vote: Motion carried 7-0

Yes: Deputy Mayor Jay Arnold, Councilmember Neal Black, Councilmember Kelli Curtis, Councilmember Amy Falcone, Councilmember Toby Nixon, Councilmember Jon Pascal, and Mayor Penny Sweet.

9. BUSINESS

a. 2021-2022 Budget Adjustment: Mid-Year Adjustment and CIP Project Closure

Financial Planning Manager George Dugdale provided an overview of the mid-year budget adjustments for Council consideration.

(1) Ordinance O-4760 and its Publication Summary, Amending the Biennial Budget for 2021-2022

Motion to Approve Ordinance O-4760 and its Publication Summary entitled, "AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING THE BIENNIAL BUDGET FOR 2021-2022."

Moved by Councilmember Toby Nixon, seconded by Councilmember Neal Black



Vote: Motion carried 7-0

Yes: Deputy Mayor Jay Arnold, Councilmember Neal Black, Councilmember Kelli Curtis, Councilmember Amy Falcone, Councilmember Toby Nixon, Councilmember Jon Pascal, and Mayor Penny Sweet.

b. Public Safety Unmanned Aerial Systems Test Program Proposal

Fire Chief Joe Sanford provided a briefing on establishing a one-year Public Safety Unmanned Aerial System ("UAS") test program. Police Chief Cherie Harris, Public Works Director Julie Underwood and Deputy Fire Chief Dave Van Valkenburg were also available to answer Councilmembers' questions.

Council recessed for a short break.

c. Eviction Zero Campaign and Tenant Protections

City Attorney Kevin Raymond provided an overview of the ordinance and responded to Council questions. Human Services Supervisor Leslie Miller also shared information.

(1) Ordinance O-4759 and its Publication Summary, Relating to a Temporary Moratorium on Residential Tenant Evictions and the COVID-19 Pandemic

Motion to Approve proposed substitute Ordinance O-4759 and its Publication Summary entitled, "AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO A TEMPORARY MORATORIUM ON RESIDENTIAL TENANT EVICTIONS AND THE COVID-19 PANDEMIC."

Moved by Councilmember Amy Falcone, seconded by Councilmember Kelli Curtis

Vote: Motion carried 4-3

Yes: Deputy Mayor Jay Arnold, Councilmember Neal Black, Councilmember Kelli Curtis, and Councilmember Amy Falcone.

No: Councilmember Toby Nixon, Councilmember Jon Pascal, and Mayor Penny Sweet.

d. Revision of Cultural Arts Commission Guidelines and Bylaws

Motion to Approve the proposed revisions to the Cultural Arts Commission Bylaws to conform to Resolution R-5478, as amended.

Moved by Deputy Mayor Jay Arnold, seconded by Councilmember Toby Nixon

Vote: Motion carried 7-0

Yes: Deputy Mayor Jay Arnold, Councilmember Neal Black, Councilmember Kelli Curtis, Councilmember Amy Falcone, Councilmember Toby Nixon, Councilmember Jon Pascal, and Mayor Penny Sweet.

Motion to Amend the draft bylaws in Article I. Member Responsibilities, Section 1. Code of Ethics and Nondiscrimination, Subsection A to replace "Conflict of Interest Policy" with "Code of Ethics Policy" and to strike references to

"community stakeholders" where it appears within Article V. Committees, Section 3. Membership.

Moved by Councilmember Kelli Curtis, seconded by Councilmember Amy Falcone  
Vote: Motion carried 7-0

Yes: Deputy Mayor Jay Arnold, Councilmember Neal Black, Councilmember Kelli Curtis, Councilmember Amy Falcone, Councilmember Toby Nixon, Councilmember Jon Pascal, and Mayor Penny Sweet.

Motion to Defer further action on the Public Art Policy Guidelines to the next regular Council meeting and to form a subcommittee consisting of Councilmembers Falcone, Curtis, and one additional Councilmember if interested, to work with staff to shape proposed edits.

Moved by Councilmember Toby Nixon, seconded by Councilmember Amy Falcone  
Vote: Motion carried 7-0

Yes: Deputy Mayor Jay Arnold, Councilmember Neal Black, Councilmember Kelli Curtis, Councilmember Amy Falcone, Councilmember Toby Nixon, Councilmember Jon Pascal, and Mayor Penny Sweet.

## 10. REPORTS

### a. City Council Regional and Committee Reports

Councilmembers shared information regarding an upcoming Eastside for All "Build for Belonging" conversation; the upcoming "Eastside Honoring Juneteenth" event; an upcoming Eastside Pride event at Kirkland Urban; a meeting with King County Councilwoman Claudia Balducci; an Eastside Transportation Partnership meeting; an upcoming Regional Transit Committee Sound Cities Association caucus meeting; the upcoming Association of Washington Cities Annual Conference; the graduation ceremonies for both Lake Washington High School and Juanita High School; the Cascade Water Alliance Finance Committee meeting; several King County Regional Water Quality Committee meetings; the East King Chambers Coalition's 2021 Legislative Wrap Up; the Mayor's address to the Rotary Club of Kirkland Downtown; a Seattle King County Realtors Housing Affordability Legislative Update seminar; a King County Elected Officials Workshop for Clean Water Plan; and a Sound Transit Round Table.

### b. City Manager Reports

#### (1) Legislative Request Memoranda

##### (a) Busking in Parks, Right-of-Way, and Commercial Areas

Discussion of this legislative request memoranda was deferred to the July 6, 2021 regular meeting.

(2) Northeast Recycling and Transfer Station Letter

City Manager Kurt Triplett provided an overview of the proposed letter to King County concerning the City's request for host-city mitigation in the event the County selects one of the two potential sites in Kirkland for the Northeast Recycling and Transfer Station (NERTS).

(3) Calendar Update

11. ITEMS FROM THE AUDIENCE

None.

12. EXECUTIVE SESSION

None.

13. ADJOURNMENT

The Kirkland City Council regular meeting of June 15, 2021 was adjourned at 10:59 p.m.

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Kathi Anderson, City Clerk

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Penny Sweet, Mayor



**CITY OF KIRKLAND**  
**Department of Finance and Administration**  
**123 Fifth Avenue, Kirkland, WA 98033 425.587.3100**  
**www.kirklandwa.gov**

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## **MEMORANDUM**

**To:** Kurt Triplett, City Manager  
**From:** Kathi Anderson, City Clerk  
**Date:** June 9, 2021  
**Subject:** CLAIM(S) FOR DAMAGES

### **RECOMMENDATION**

It is recommended that the City Council acknowledge receipt of the following Claim(s) for Damages and refer each claim to the proper department (risk management section) for disposition.

### **POLICY IMPLICATIONS**

This is consistent with City policy and procedure and is in accordance with the requirements of state law (RCW 35.31.040).

### **BACKGROUND DISCUSSION**

The City has received the following Claim(s) for Damages from:

- (1) Danks, Christopher R.  
8404 NE 141<sup>st</sup> Street  
Bothell, WA 98011

**Amount:** \$7,610.07

**Nature of Claim:** Claimant states damage occurred to their residential property when a City tree fell on their fence and trampoline.

- (2) Lynch, Scott  
409 Lake Avenue West  
Kirkland, WA

**Amount:** \$2,548.32

**Nature of Claim:** Claimant states damage occurred to his personal vehicle's tires and wheels resulting from a protruding sewer grate in a road construction zone in the northbound lane of 108<sup>th</sup> Avenue NE.

- (3) Zhovtobriukh, Levgeniia  
11603 112<sup>th</sup> Avenue NE  
Kirkland, WA 98034

**Amount:** \$6,252.00

**Nature of Claim:** Claimant states damage occurred to their residential property from flooding resulting from a broken water pipe on 110<sup>th</sup> Avenue NE.

**Note:** Names of Claimants are no longer listed on the Agenda since names are listed in the memo.

**CITY OF KIRKLAND****Department of Public Works****123 Fifth Avenue, Kirkland, WA 98033 425.587.3800****[www.kirklandwa.gov](http://www.kirklandwa.gov)**

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**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Scott Gonsar, P.E., Project Engineer  
Rod Steitzer, P.E., Capital Projects Manager  
Julie Underwood, Public Works Director

**Date:** June 16, 2021

**Subject:** ANNUAL STRIPING PROGRAM—2021 PROJECT—AWARD CONTRACT

**RECOMMENDATION:**

It is recommended that the City Council award a construction contract to Specialized Pavement Marking, Inc., of Tualatin, Oregon, in the amount of \$334,865.00.

By taking action on this item under the consent calendar, the City Council is awarding a construction contract for the subject project.

**BACKGROUND DISCUSSION:**

The Annual Striping Program maintains the pavement markings that provide traffic safety and define the travel paths for motorists, bicyclists, and pedestrians. This recommended contract includes the repainting of travel lanes on all arterials and collectors throughout the City (see Attachment A, "Vicinity and Area Map"). The contract also provides for the replacement of worn thermoplastic crosswalk markings, stops bars, turn arrows, and other on-pavement symbols on a prioritized basis (see Attachment B, "Thermoplastic Vicinity and Area Map").

The volume of work for the Annual Striping Program is dynamic and changes each year because of wear, weather, and public and private construction activity. For safety and consistency, the program repaints 100% of arterial and collector painted lane markings every year. Thermoplastic installations typically lasts 5-7 years before the reflectivity degrades and it starts to crack because of differential expansion/contraction. However, wear from traffic, as well as plowing and sand use, also impacts the replacement time for thermoplastic pavement markings. Because of this, each spring the entire thermoplastic inventory is reviewed and prioritized for replacement. Thermoplastic markings are prioritized to focus on areas with the highest pedestrian and bicycle use and fit within available funding. The prioritization process is done in a collaborative effort between Maintenance Center crews, the Transportation Division, and Capital Improvement Program Division.

Historically, the level of thermoplastic replacement has exceeded the available budget. As a result, thermoplastic replacement also is prioritized between neighborhoods. In 2020, thermoplastic repairs took place in Totem Lake, Market Street, Norkirk, Moss Bay, Everest, Lakeview, Central Houghton, Bridle Trails, Finn Hill, North Juanita, South Juanita, and Kingsgate neighborhoods.

The construction contract is structured with two schedules of work. Schedule A provides for restoration of all painted pavement markings, and Schedule B provides for restoration of thermoplastic markings. With an engineer's estimate of \$386,047.50 for both schedules, staff first advertised for contractor bids on May 12, 2021. On June 2<sup>nd</sup>, three bids were received, with Specialized Pavement Marking, Inc., being the lowest responsible bidder. The bid results are as follows:

**Table 1: Project Bid Results**

Bidder	Schedule A: Paint Markings	Schedule B: Thermoplastic Markings	Total
<b>Specialized Pavement Marking</b>	<b>\$180,700.00</b>	<b>\$154,165.00</b>	<b>\$334,865.00</b>
Apply A Line	\$233,032.00	\$146,147.86	\$379,179.86
<i>Engineer's Estimate</i>	<i>\$246,230.00</i>	<i>\$183,817.50</i>	<i>\$386,047.50</i>
Stripe Rite	\$349,050.00	\$183,089.00	\$532,139.00

Because of recent high bids received by Kirkland and neighboring agencies, prior to bidding this contract staff re-estimated construction costs. The good news is that the low bid is below budget but within approximately 15% of the engineer's re-estimate. Staff has a history of working well with Specialized Pavement Marking, and their references checks were satisfactory.

**Budget**

Funding and anticipated expenses for the 2021 Project are shown in Table 2, below:

**Table 2: Funding and Anticipated Expenses**

Category	Annual Striping Program (2021 Project)
Funding	\$500,000
Soft Costs	(\$80,000)
Construction	
Schedule A:	(\$180,700)
Schedule B:	(\$154,165)
Total Construction	(\$334,865)
Contingency (*)	(\$85,135)
Total Expenses	(\$500,000)
Balance	\$0.00

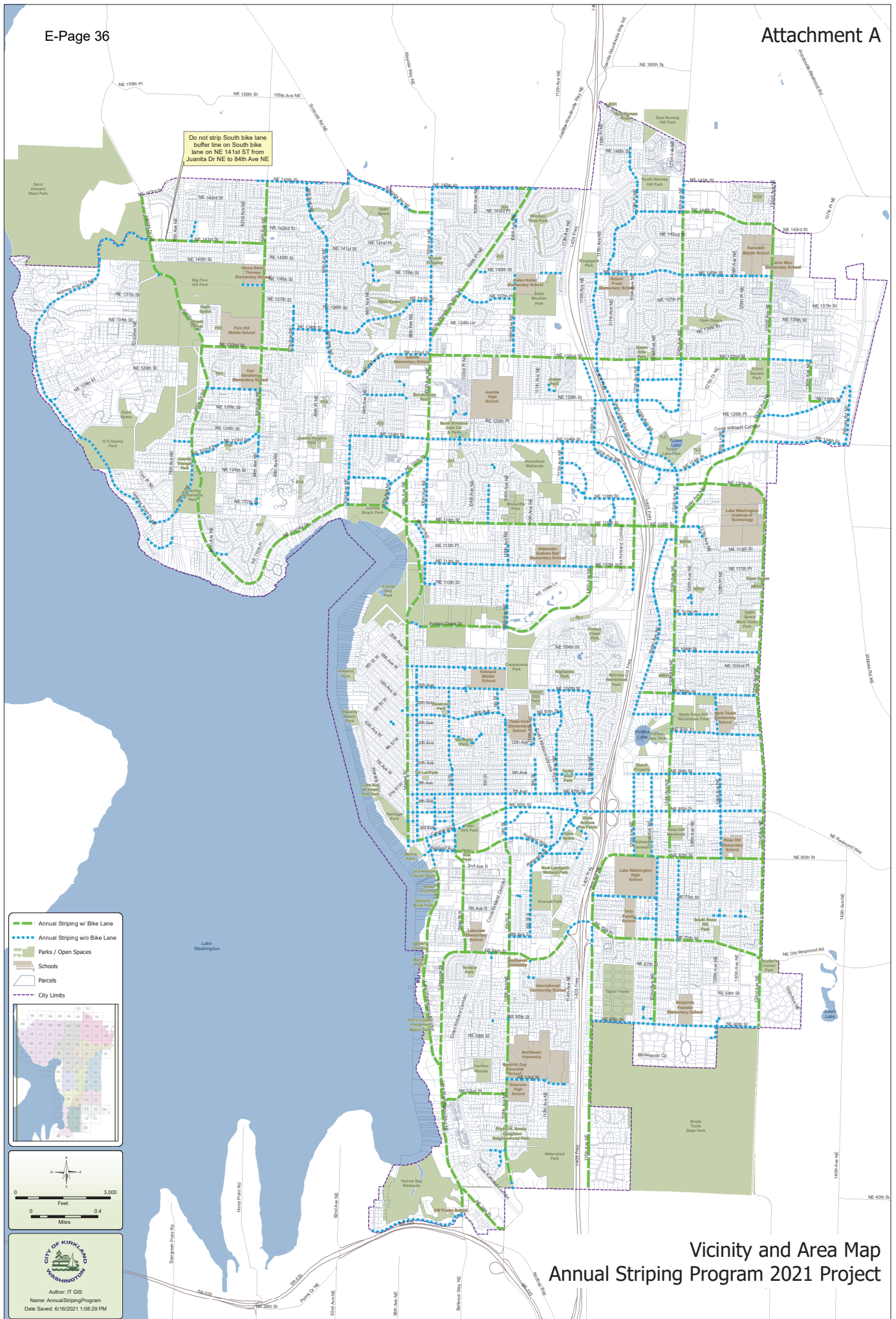
(\*) Near the completion of the project, staff will evaluate whether additional prioritized work can be accomplished. The goal is to complete as much as funding will allow.

**NEXT STEPS:**

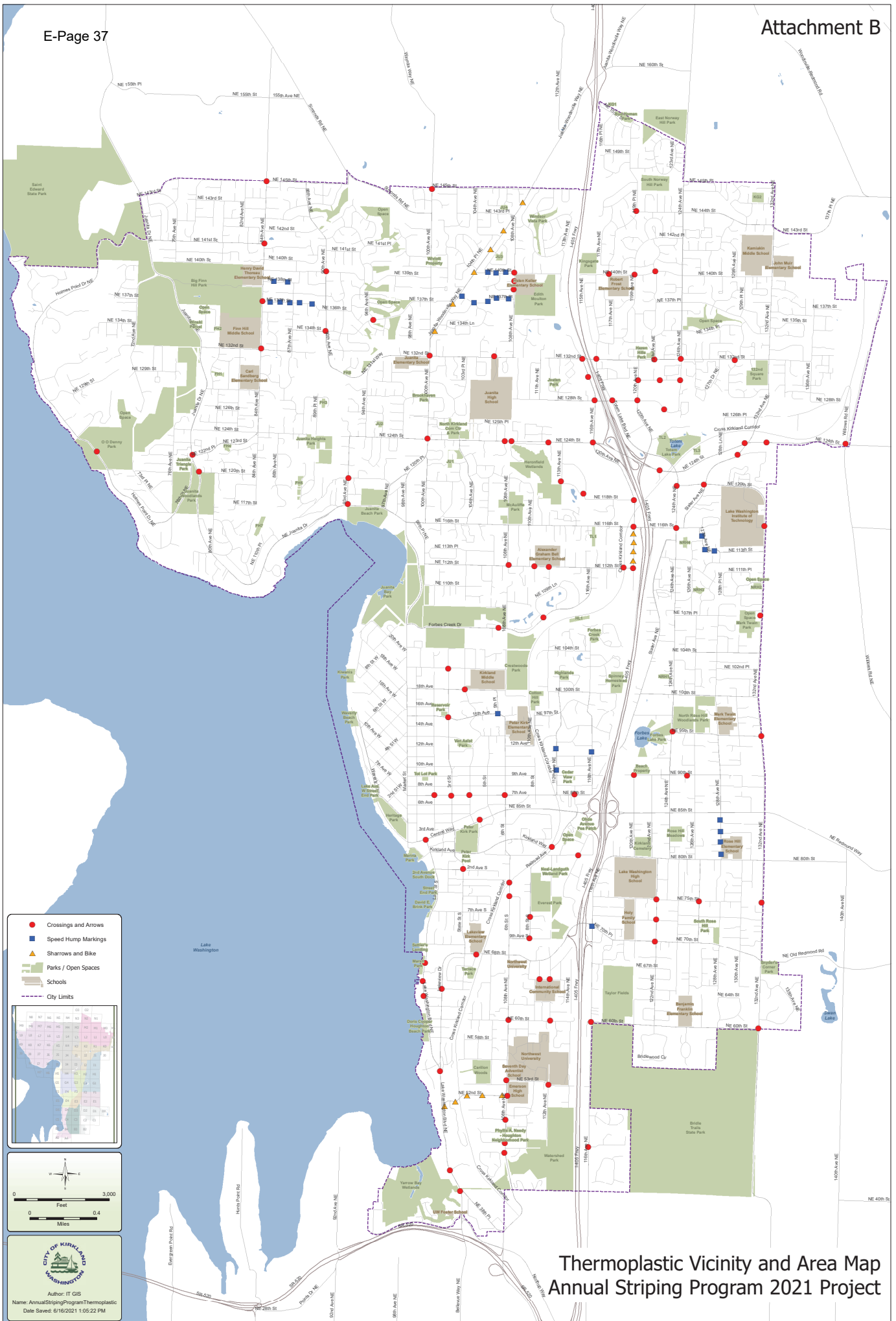
Were the contract to be awarded at the July 6<sup>th</sup> City Council meeting, the physical work will begin in July and be complete by the end of September 2021, depending on the weather. In advance of the work, staff will keep the public informed through regularly-updated construction timelines and pertinent project information on the City's website.

Attachment A: Vicinity and Area Map—Annual Striping Program—2021 Project

Attachment B: Thermoplastic Vicinity and Area Map—Annual Striping Program—2021 Project







Thermoplastic Vicinity and Area Map  
Annual Stripping Program 2021 Project

**CITY OF KIRKLAND****Department of Public Works****123 Fifth Avenue, Kirkland, WA 98033 425.587.3800****[www.kirklandwa.gov](http://www.kirklandwa.gov)**

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**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Scott Gonsar, P.E., Project Engineer  
Rod Steitzer, P.E., Capital Projects Manager  
Julie Underwood, Public Works Director

**Date:** June 24, 2021

**Subject:** 122<sup>nd</sup> AVENUE NE TRAFFIC CALMING PROJECT—AWARD CONTRACT

**RECOMMENDATION:**

It is recommended that the City Council:

- Award a construction contract to NPM Construction Company of Maple Valley, Washington, in the amount of \$153,052.50; and
- Authorize the use of \$135,000.00 of School Zone Safety Camera Reserves to fully fund the project.

By taking action on this item under the consent calendar, the City Council is awarding a construction contract for the subject project and authorizing the use of School Zone Safety Camera Reserves.

**BACKGROUND DISCUSSION:**

The Neighborhood Traffic Control Program identifies effective ways to calm traffic on non-arterial residential streets to improve safety for motorists, pedestrians, and cyclists. Strategies for the program include education, pavement markings, signage, radar signs, speed cushions, traffic islands, and curb bulbs.

The 122<sup>nd</sup> Avenue NE Traffic Calming Project was a collaborative effort between the South Rose Hill and Bridle Trails Neighborhood Associations and the City to reduce vehicle speeds and improve safety along 122<sup>nd</sup> Avenue NE. The project has two elements: 1) pavement markings between NE 60<sup>th</sup> Street and NE 70<sup>th</sup> Street; and 2) non-motorized safety and traffic calming improvements at the intersections of NE 65<sup>th</sup> Street and NE 68<sup>th</sup> Place (See Attachment A, Vicinity and Area Map). Specific work includes rechannelizing travel lanes, installing lane delineators (traffic candles), adding signage, realigning curbs, installing surface water improvements, and very limited paving.

With an engineer's estimate of \$125,928.00 for construction, the Project was first advertised on May 17, 2021. Five bids were received on June 2, 2021, with NPM Construction Company being the lowest responsible bidder. The bid results are as follows:

**Table 1: 122<sup>nd</sup> Avenue NE Traffic Calming Bid Results**

<b>Contractor</b>	<b>Total Bid</b>
<i>Engineer's Estimate</i>	<i>\$125,928.00</i>
<b>NPM Construction Company</b>	<b>\$153,052.50</b>
Wolfskill Construction, LLC	\$155,623.05
Road Construction Northwest, Inc	\$159,948.25
Blue Mountain Construction Group, LLC	\$172,128.00
Kamins Construction, Inc	\$172,232.15

Staff reviewed the bid and found that the primary factors for the higher cost were mobilization, traffic control, and asphalt removal and replacement at two separate location. References for NPM Construction were satisfactory.

### **Budget**

The Neighborhood Traffic Control Program funds multiple projects to accomplish program goals. The program has biennial funding, and when the 122<sup>nd</sup> Avenue NE project began the program had an available fund balance of \$127,800. However, prioritized and immediate needs for the 119<sup>th</sup> Avenue NE speed signs (\$14,300) and 111<sup>th</sup> Avenue NE curb and sidewalk improvements (\$25,000) reduced the available funding to \$88,500. Per the adopted CIP, the next available funding for the Neighborhood Traffic Control Program will be \$50,000 in 2022. Table 2, below, reflects currently available funds, anticipated expenses, and a negative balance.

**Table 2: 122<sup>nd</sup> Avenue NE Traffic Calming (TRC-1170003) Funding and Expenses**

Category	122 <sup>nd</sup> Ave NE Traffic Calming
Funding (available)	\$88,500
Soft Costs	(\$55,142)
Construction	(\$153,053)
Contingency	(\$15,305)
Total Expenses	(\$223,500)
Balance	(\$135,000)

The total project cost is currently estimated to be \$223,500 which includes a 10% contingency. Total costs for design, inspection, and staff time total 25%, which is less than the typical amount for safety and non-motorized improvements. Staff accomplished this by working closely with the design consultant and making use of in-house inspection services.

Even though staff applied the aforementioned cost saving strategies for the project, additional funding is required to construct the improvements. Since the project improves pedestrian and bicycle safety and calms traffic near Benjamin Franklin Elementary and Holy Family Parish School, staff is recommending the use of School Zone Safety Camera Reserves as detailed in Attachment B, Fiscal Note, to cover the projected funding gap.

**NEXT STEPS:**

Were the Council to approve the award of the contract and authorize the use of additional funds, construction work is scheduled to begin in late July and be complete by the end of September 2021, depending upon the weather. In advance of the work, staff will keep the public informed through regularly-updated construction timelines and pertinent project information on the City's web site.

Attachment A: Project Vicinity & Area Map

Attachment B: Fiscal Note



## Vicinity & Area Map

### 122nd Avenue NE Traffic Calming Project

**FISCAL NOTE***CITY OF KIRKLAND*

Source of Request														
Julie Underwood, Director of Public Works														
Description of Request														
Project budget increase of \$135,000 for the Neighborhood Traffic Control Program ( <b>TRC1170300</b> ). This will increase the budget for the 122nd Ave NE Traffic Calming Project (part of the Neighborhood Traffic Control Program) from \$88,500 to \$223,500. The budget for the Neighborhood Traffic Control Program will increase from \$127,800 to \$262,800. This request will be funded with School Zone Safety Camera Reserves.														
Legality/City Policy Basis														
Fiscal Impact														
<b>- One-time transfer of \$135,000 in School Zone Safety Camera Reserves to TRC1170300.</b>														
Recommended Funding Source(s)														
<b>Reserve</b>	Description	2022 Est End Balance	Prior Auth. 2021-22 Uses	Prior Auth. 2021-22 Additions	Amount This Request	Revised 2022 End Balance	2022 Target							
	School Zone Safety Camera Reserve*	2,119,545	(200,469)	0	(135,000)	1,784,076	N/A							
	Finance processing notes: School Zone Safety Camera Reserve - PL: PDTSSZCAMS, GL: 01019503*599010													
<b>Revenue/Exp Savings</b>														
<b>Other Source</b>														
Other Information														
*The assumed reserve balances are based on the beginning balance in 2021 (\$546,709) and estimated revenues above expenditures in 2021 and 2022. Estimated School Zone Safety Camera revenues were calculated using a limited time frame of actual revenues and will be recalculated. Reserve balances will be adjusted accordingly in 2021 as part of the mid-biennial budget update.														

Prepared By	Robby Perkins-High, Financial Planning Supervisor	Date	June 29, 2021
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**CITY OF KIRKLAND**

Public Works Department

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

[www.kirklandwa.gov](http://www.kirklandwa.gov)

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**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Anneke Davis, P.E., Senior Project Engineer  
Martha Chaudhry, Special Projects, Economic Development  
Tracey Dunlap, Deputy City Manager, Operations  
James C. Lopez, Deputy City Manager, External Affairs  
Julie Underwood, Public Works Director

**Date:** June 24, 2021

**Subject:** Art Consultant to Manage Public Art Selection & Installation for Four Kirkland Fire Stations

**RECOMMENDATION:**

That the City Council approves the staff recommendation to issue a Request For Qualifications (RFQ) and hire a qualified Art Consultant to assist the City in incorporating public art within four fire station projects. The Art Consultant will lead the coordination of the public art effort and will assist the City in soliciting and selecting one to four artists to incorporate public artwork into the fire station project design and construction of the scheduled projects.

By taking action on this memo during approval of the consent calendar, City Council is authorizing staff to issue the RFQ and hire a qualified Art Consultant.

**BACKGROUND DISCUSSION:**

1% for Art is assessed on qualified capital improvement projects (CIP) that are undertaken by the City of Kirkland. The Kirkland Cultural Arts Commission (KCAC) together with City staff curates and advises the City Council on public art acquisitions and loans, and it reviews and recommends projects under the City's "1% for Art" program.

In November 2020, the Kirkland voters approved the City's Proposition 1 – Fire & Emergency Medical Services 2020 Ballot Measure, which was based on the Kirkland Fire Department's Strategic Plan. With the success of the measure, the City will design, construct, and or remodel the following stations:

1. Fire Station 27 Replacement (new station) – April 2022 – May 2023
2. Fire Station 22 Expansion and Remodel – April 2022 – March 2023
3. Fire Station 26 Expansion and Remodel – January 2024 to December 2024
4. Fire Station 21 Expansion and Remodel – February 2025 to December 2025

Each of the four fire station projects is assigned an art budget commensurate with 1% of the total project budget, although there is an ability to reallocate funds between projects in order to best meet the intent of public art. Some projects may have better opportunities or be more suitable for more investment in public art. One Fire Station Art Steering Committee (Steering Committee) will be formed, consisting of the art consultant, representatives from the project teams, the Kirkland Fire Department, the City Manager's Office, and the Kirkland Cultural Arts Commission.

The goals for the artwork are to invigorate, inspire and energize the Kirkland community. The artwork should communicate Kirkland as a safe, inclusive and welcoming place in accordance with Kirkland [Resolution 5240](#) (2017). The artwork should also honor, celebrate and/or reflect the diversity of the Kirkland community and encourage a sense of belonging for all people. Finally, the artwork should align with the efforts articulated in Kirkland Resolution R-5434 (2020) to ensure the safety and respect of black people and to dismantle structural racism.

To maximize efficiency in the art process, provide staff support, and to have a consistent approach to art for each project, staff would like to seek a qualified Art Consultant to assist the City in incorporating public art within the four fire station projects. The Art Consultant would lead the coordination of the public art effort and will assist the City in soliciting and selecting one to four artists to incorporate public artwork into the fire station project design and construction of the scheduled projects. The staff would hire the Art Consultant through a Request for Qualifications (RFQ) process (draft attached), consistent with the City of Kirkland's process for procuring professional services. The community and Council goals for the artwork are included in the RFQ.

### **Budget**

The total budget for the art for the four projects is \$466,503. This is the total amount available for the Art Consultant fees, the projects' design teams' coordination with the Art Consultant and artists, the artists' design efforts, artwork fabrication and installation, taxes, artists' stipends, and other expenses related to the scope of work. A draft breakdown for all four projects is shown below.

Project	Project Budget	Art Consultant (8%)	A/E Team Coordination (7%)	Art Design/ Fabrication/ Installation (85%)	
FS-22	\$ 96,173	\$ 7,694	\$ 6,732	\$ 81,747	\$ 96,173
FS-27	\$225,780	\$ 18,062	\$ 15,805	\$ 191,913	\$ 225,780
FS-26	\$ 84,320	\$ 6,746	\$ 5,902	\$ 71,672	\$ 84,320
FS-21	\$ 60,230	\$ 4,818	\$ 4,216	\$ 51,196	\$ 60,230
<u>TOTALS</u>	<u>\$ 466,503</u>	<u>\$ 37,320</u>	<u>\$ 32,655</u>	<u>\$ 396,528</u>	<u>\$ 466,503</u>



### **Tentative Schedule**

1. RFQ posted: July 15, 2021
2. Questions due: August 9, 2021
3. Answers posted on City website: August 12, 2021
4. RFQ due: August 19, 2021
5. Review period (interviews may occur): August – Sept. 2021

The goal is to deliver and install the art by the completion of each project. This may be difficult for Fire Station 22 and 27 because of timing required to onboard the art consultant, and in turn solicit, select, design and fabricate chosen artwork by the FS-22 and FS-27 scheduled completion dates, but staff will work to complete art for those projects as soon as practical.

By taking action on this memo during approval of the consent calendar, City Council is authorizing staff to issue the RFQ and hire a qualified Art Consultant.



# **City of Kirkland**

## **Request for Qualifications**

### **Art Consultant for Fire Station Projects Job # 21-21-CMO**

**Issue Date:** July 15, 2021

**Due Date:** August 19, 2021 – 3:00 p.m. PDT

## **REQUEST FOR QUALIFICATIONS**

Notice is hereby given that qualifications will be received by the City of Kirkland, Washington, for:

### **Art Consultant to Manage Public Art Selection & Installation for Four Kirkland Fire Stations**

File with Purchasing Agent, Finance Department, 123 - 5<sup>th</sup> Ave, Kirkland WA, 98033

Qualifications received later than **3:00 p.m. PDT August 19, 2021** will not be considered.

A copy of this Request for Qualifications (RFQ) may be obtained from the City's web site at <http://www.kirklandwa.gov/>. Click on the Business tab at the top of the page and then click on the Request for Proposals link found under "Doing Business with the City".

The City of Kirkland reserves the right to reject any and all submissions, and to waive irregularities and informalities in the submittal and evaluation process. This RFQ does not obligate the City to pay any costs incurred by respondents in the preparation and submission of qualifications. Furthermore, the RFQ does not obligate the City to accept or contract for any expressed or implied services.

In order to be considered for award, all the required information listed in the RFQ shall be included with each consultant submission. Failure to submit all of the requested documentation may disqualify the submission from being considered.

The City requires that no person shall, on the grounds of race, religion, color, national origin, sex, age, marital status, political affiliation, sexual orientation, or the presence of any sensory, mental, or physical disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The City of Kirkland further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs are federally funded or not.

In addition to nondiscrimination compliance requirements, the consultant ultimately awarded a contract shall comply with federal, state and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, protection of public and employee safety and health; environmental protection; waste reduction and recycling; the protection of natural resources; permits; fees; taxes; and similar subjects.

**Dated this X Day of June, 2021**

Jay Gewin  
Purchasing Agent  
425-587-3123

## **City of Kirkland Request for Qualifications Art Consultant for Fire Station Projects**

### **Primary Contact:**

Martha Chaudhry  
Special Projects, Economic Development  
City Manager's Office  
Email: [mchaudhry@kirklandwa.gov](mailto:mchaudhry@kirklandwa.gov)  
(425) 587-3266

### **Project Engineer:**

Anneke Davis  
Senior Project Engineer  
City of Kirkland Public Works  
Email: [adavis@kirklandwa.gov](mailto:adavis@kirklandwa.gov)

### **Description:**

The City of Kirkland is seeking a qualified Art Consultant to assist the City in incorporating public art within four fire station projects. The Art Consultant will lead the coordination of the public art effort and will assist the City in soliciting and selecting one to four artists to incorporate public artwork into fire station project design and construction of the scheduled projects.

Construction schedule for each fire station project:

1. [Fire Station 27 Replacement](#) – April 2022 – May 2023
2. [Fire Station 22 Expansion and Remodel](#) – April 2022 – March 2023
3. [Fire Station 26 Expansion and Remodel](#) – January 2024 to December 2024
4. [Fire Station 21 Expansion and Remodel](#) – February 2025 to December 2025

### **Background:**

1% for Art is assessed on qualified capital improvement projects (CIP) that are undertaken by the City of Kirkland. The Kirkland Cultural Arts Commission (KCAC) together with City staff curates and advises the City Council on public art acquisitions and loans, and it reviews and recommends projects under the City's "1% for Art" program.

Each of the four fire station projects is assigned an art budget commensurate with 1% of the total project budget, although there is an ability to reallocate funds between projects in order to best meet the intent of public art. Some projects may have better opportunities or be more suitable for more investment in public art. One Fire Station Art Steering Committee (Steering

Committee) will be formed, consisting of the art consultant, representatives from the project teams, the Kirkland Fire Department, the City Manager's Office and the Kirkland Cultural Arts Commission.

The total budget for the art for the four projects is \$466,503. This is the total amount available for the Art Consultant fees, the projects' design teams' coordination with the Art Consultant and artists, the artists' design efforts, artwork fabrication and installation, taxes, artists' stipends, and other expenses related to the scope of work.

The artwork should invigorate, inspire and energize the Kirkland community. It should communicate Kirkland as a safe, inclusive and welcoming place in accordance with Kirkland Resolution 5240 (2017). The artwork should also honor, celebrate and/or reflect the diversity of the Kirkland community and encourage a sense of belonging for all people. Finally, it should align with the efforts articulated in Kirkland Resolution R-5434 (2020) to ensure the safety and respect of Black people and dismantle structural racism.

### **Draft Scope of Services:**

#### **Project Onboarding**

- Meet with City staff and/or Steering Committee to review Kirkland's public art resolution, public art policy and guidelines and receive background and summary of project scope;
- Advise on preliminary ways to incorporate public art including possible themes, locations and examples of types of art within each project's 1% for Art budget;
- Advise on budget breakdown including the artwork component (design through fabrication of art).

#### **Art Direction and Site Approval**

- Meet with the Steering Committee (three - five meetings of approximately two hours) to:
  - review the four Fire Station projects;
  - present possible methods of and locations for incorporating art into the projects;
  - gather feedback on possible methods and location of incorporating art;
  - guide the Steering Committee to a preferred direction for public art for each project.
- Coordinate with project engineer on constraints and requirements for preferred sites
- Provide a summary report of discussions, likely directions and decisions
- Concept approval of art through the Steering Committee, Kirkland Cultural Arts Commission, and City Council

#### **Artist Recruitment**

- Write an RFP/Call for Artist(s) reflecting the discussions, direction and decisions reached with the Steering Committee;
- Design and conduct an outreach strategy for the RFP/Call for Artist(s), with intentional strategies to ensure the inclusion of artists that identify as Black, Indigenous, and People of Color, women and/or LGBTQIA+;
- If necessary, schedule/organize/conduct site visits for artists

### Artist Selection

- Design, communicate, document and lead the Steering Committee through the process of artist(s) selection;
- Working with the Steering Committee to review artists' submissions and prepare a shortlist of artworks and artists for presentation/interview to the Steering Committee;
- Prepare the shortlisted artists for presentation/interview;
- Schedule, plan and lead artists' interviews with Steering Committee
- Create and provide a selection rubric for use by the Steering Committee, and a scoring system;
- Facilitate and lead the selection of artwork and artist(s) with Steering Committee;
- Provide a summary report of the artist recruitment strategy and methodology, and art and artist(s) selection process and decisions;
- Notify artists of outcome;
- Facilitate contracting of selected artist(s)

### Art Creation and Installation

- Manage all aspects of art design, approval, fabrication and installation coordinating closely with the Steering Committee, project teams and the artist(s);
- Submit a comprehensive final report detailing the entire art selection process, strategy, methodology, selection and implementation. This should include but may not be limited to the scope and budget of the art projects, details of the physical sites at the fire stations, art and artist selection process, internal Steering Committee processes, background information on the selected artist(s), details of the chosen artworks including concept, materials, design, fabrication and installation, visual documentation of art concepts, fabrication, installation, conceptual reference to and relevance to City of Kirkland Resolution R-5240 (2017) which affirms that Kirkland is a safe, inclusive and welcoming community, and/or Resolution 5434 (2020) ensuring the safety and respect of Black people.

### **Contract**

The contract shall consist of the following documents: This Request for Qualifications (RFQ), the accepted proposal, a Professional Services Agreement (see Attachment A), and any agreed upon written changes to any of the foregoing documents. The contract documents are complementary and what is called for in any one document shall be binding as if called for by all.

### **Art Consultant RFQ Application Deadline**

#### Tentative Schedule:

1. Date of Contract award: Mid/late September, 2021
2. Start Date: Mid October 2021
3. Completion Date: February, 2026 approximately

### **Application Submittal:**

Applications must include:

- Short bio and resume or *curriculum vitae* including applicant's full name, company name if applicable, contact phone and contact email;
- Letter of interest including a short narrative explaining interest in the project, general approach to the draft scope of work, and relevant skills and experience
- Description of past relevant projects including visuals if appropriate
- Contact information for three references
- Statement of availability and tentative schedule and milestones for deliverables

### **Art Consultant Eligibility and Selection Criteria:**

The call is open to experienced art consultants. Preference will be given to those residing in Washington state. Kirkland-based consultants are strongly encouraged to apply. Black, indigenous, and people of color (BIPOC) art consultants are strongly encouraged to apply.

- Comparable work assisting owners and/or municipalities procure public art for the built environment;
- Ability to work with architects, engineers, contractors and a diverse project team;
- Ability to meet project timeline.

### **Consultant Selection Schedule:**

4. RFQ posted: July 15, 2021
5. Questions due: August 9, 2021
6. Answers posted on City website: August 12, 2021
7. RFQ due: August 19, 2021
8. Review period (interviews may occur) August – Sept. 2021

### **Questions:**

Upon release of this RFQ, all communication concerning the RFQ should be directed to the City's RFQ Coordinator listed below. Questions and answers will be posted for public view on the City's website per the schedule above. Unauthorized contact regarding this RFQ with any other City employees may result in disqualification. Any oral communications will be considered unofficial and non-binding on the City. Consultants should rely only on written statements issued by the RFQ Coordinator. The City's RFQ Coordinator for this project is:

**Name:** Martha Chaudhry  
**E-mail:** [mchaudhry@kirklandwa.gov](mailto:mchaudhry@kirklandwa.gov)  
**Office:** (425) 587-3266  
**Cell:** (425) 499-2765

### **Qualification Submittal Instructions**

Submissions must be received by no later than **3:00 p.m. PDT August 19, 2021.**

We encourage proposals to be submitted by email. Emailed submissions should include "Qualification-Job #21-21-CMO" in the subject line and be addressed to: [purchasing@kirklandwa.gov](mailto:purchasing@kirklandwa.gov). Emailed submissions must be in MS Word or PDF format and cannot exceed 20MB. All submissions received before the deadline will be acknowledged through a response email.

As an alternate to email, proposals (original and one copy) can be mailed to:

City of Kirkland

ATTN: Purchasing staff 21-21-CMO

123 5<sup>th</sup> Avenue

Kirkland, WA 98033

Mailed proposals must be postmarked prior to the deadline of 3:00 pm PDT August 19, 2021.



## **ARTISTIC SERVICES AGREEMENT**

### **ASA 06/30/2020**

---

The City of Kirkland, Washington, a municipal corporation ("City") and \_\_\_\_\_, whose address is \_\_\_\_\_ ("Artist").

In consideration of the mutual benefits and conditions set forth below, the parties agree as follows:

#### **I. SERVICES BY ARTIST**

- A. The Artist agrees to perform the services described in Attachment \_\_\_\_ to this Agreement, which attachment is incorporated herein by reference.
- B. All services and duties shall be conducted and performed diligently, completely and in accordance with professional standards of conduct and performance.

#### **II. COMPENSATION**

- A. The total compensation to be paid to Artist for these services shall not exceed \$\_\_\_\_\_, as detailed in Attachment \_\_\_\_\_.
- B. Payment to Artist by the City in accordance with the payment ceiling specified above shall be the total compensation for all services performed under this Agreement and supporting documents hereto as well as all subcontractors' fees and expenses, supervision, labor, supplies, materials, equipment or the use thereof, reimbursable expenses, and other necessary incidentals.
- C. The Artist shall be paid on the basis of invoices submitted. Invoicing will be on the basis of percentage complete or on the basis of time, whichever is applicable in accordance with the terms of this Agreement.
- D. The City shall have the right to withhold payment to Consultant for any services not completed in a satisfactory manner until such time as Consultant modifies such services to the satisfaction of the City. The Artist shall be paid on the basis of agreed upon project milestones for which invoices will be submitted. Invoicing will be on the basis of agreed upon milestones as outlined in Attachment\_\_\_\_\_.
- E. Unless otherwise specified in this Agreement, any payment shall be considered timely if a warrant is mailed or is available within 45 days of the date of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

#### **III. TERMINATION OF AGREEMENT**

The City or the Artist may terminate this Agreement at any time, with or without cause, by giving ten (10) days' notice to the other in writing. In the event of termination, all finished or unfinished reports, or other material prepared by the Artist pursuant to this Agreement, shall be provided to the City. In the event the City

terminates prior to completion without cause, Artist may complete such analyses and records as may be necessary to place its files in order. Artist shall be entitled to receive just and equitable compensation for any satisfactory services completed on the project prior to the date of termination, not to exceed the payment ceiling set forth above.

#### **IV. OWNERSHIP OF WORK PRODUCT**

- A. Ownership of Documents, Models: Upon final acceptance, all original studies, drawings, designs, and maquettes prepared and submitted under this Agreement shall be returned to the Artist and shall belong to the Artist. At the request of the City, the Artist will agree to loan the City studies, drawings, and/or maquettes for the use in exhibits of display or as otherwise needed for reasonable periods to be mutually agreed upon by the Artist and the City, the Artist agrees not to unreasonably withhold Artist consent.
- B. Title: Title of the work shall pass to the City upon final acceptance. The City shall not be liable for any damages of the artwork prior to the date of final acceptance. In the event the City wishes to remove or relocate the artwork, the City will make all reasonable attempts to notify the Artist, and to seek the Artist's advice and consensus. The City is prohibited from materially altering the artwork in a way that would compromise the artistic intent, except for reasonable repairs and maintenance. Should the City do so, the City shall attempt to contact the Artist and the Artist has the right to remove their name from the artwork.

#### **V. WARRANTIES**

- A. Original Work: The Artist warrants that the design of work being commissioned is the original product of their own creative efforts and does not infringe upon any copyright, is not a duplicate thereof, has not been accepted for sale elsewhere, and is limited to a single edition.
- B. Integrity of Materials, Fabrication, and Installation: The Artist represents and warrants that the execution and fabrication of the artwork will be performed in a competent manner, and will be free of defects in material and workmanship. The Artist's liability for the breach of this warranty shall be limited as follows: The Artist shall, for a period of one year after final acceptance of the work being commissioned, be responsible for the repair costs to the artwork, assuming that damage was the result of defects in material and workmanship. Repair required resulting from vandalism or other factors beyond the Artist's control are not the responsibility of the Artist under this Agreement.

#### **VI. PROPRIETARY RIGHTS AND RIGHTS OF REPRODUCTION**

- A. The Artist retains all rights they may be entitled to pursuant to the Copyright Act of 1976, 17 U.S.C. 101 et.seq., and all other rights in and to the artwork except ownership and possession, and except as such rights that are limited to this Section.
- B. Because the parties intend that the artwork in its final dimension shall be unique, the Artist shall not make any additional duplicate, three-dimensional reproductions of the artwork or permit others to do so except by written

permission of the City. The Artist grants to the City and its assigns an irrevocable, non-exclusive, royalty free license to graphically reproduce the artwork for City use, including but not limited to, for the purposes of marketing, publicity, education or exhibition of the artwork.

- C. The City shall make their best efforts to credit the Artist and when applicable, publish a copyright notice substantially in the following form: Artist's Name, Date of Creation. The Artist shall use their best efforts to give a credit reading "an original work owned and commissioned by the City of Kirkland" in any public showing under the Artist's control of reproductions of the work.
- D. If for any reason the proposed design is not implemented, all rights to the proposed Artist's artwork shall be recognized as the Artist's intellectual property and protected from infringement in accordance with Federal Law.

## **VII. GENERAL ADMINISTRATION AND MANAGEMENT**

The \_\_\_\_\_ for the City of Kirkland shall review and approve the Artist's invoices to the City under this Agreement, shall have primary responsibility for overseeing and approving services to be performed by the Artist, and shall coordinate all communications with the Artist from the City.

## **VIII. COMPLETION DATE**

The estimated completion date for the Artist's performance of the services specified in Section I is \_\_\_\_\_.

Artist will diligently proceed with the services contracted for, but Artist shall not be held responsible for delays occasioned by factors beyond its control which could not reasonably have been foreseen at the time of the execution of this Agreement. If such a delay arises, Artist shall forthwith notify the City.

## **IX. SUCCESSORS AND ASSIGNS**

The Artist shall not assign, transfer, convey, pledge, or otherwise dispose of the benefits or conditions of this Agreement or any part of this Agreement without prior written consent of the City.

## **X. NONDISCRIMINATION**

Artist shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.

## **XI. HOLD HARMLESS/INDEMNIFICATION**

To the greatest extent allowed by law the Artist shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from sole negligence or breach of any of its obligations in performance of this Agreement.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Artist and the City, its officers, officials, employees, and volunteers, the Artist's liability hereunder shall be only to the extent of the Artist's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Artist's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

## **XII. LIABILITY INSURANCE COVERAGE**

The Artist shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Artist, its agents, representatives, or employees. A failure to obtain and maintain such insurance or to file required certificates and endorsements shall be a material breach of this Agreement.

Artist's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Artist to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

### **A. Minimum Scope of Insurance**

Artist shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be as least as broad as Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Artist's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Artist's profession.

**B. Minimum Amounts of Insurance**

Artist shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

**C. Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Artist's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Artist's insurance and shall not contribute with it.
2. The Artist shall provide the City and all Additional Insureds for this services with written notice of any policy cancellation, within two business days of their receipt of such notice.

**D. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

**E. Verification of Coverage**

Artist shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Artist before commencement of the services.

**F. Failure to Maintain Insurance**

Failure on the part of the Artist to maintain the insurance as required shall constitute a material breach of agreement, upon which the City may, after giving five business days' notice to the Artist to correct the breach, immediately terminate the agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Artist from the City.

**G. City Full Availability of Artist Limits**

If the Artist maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Artist, irrespective of whether such limits maintained by the Artist are greater than those required by this agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Artist.

**XIII. COMPLIANCE WITH LAWS/BUSINESS LICENSE**

The Artist shall comply with all applicable State, Federal, and City laws, ordinances, regulations, and codes. Artist must obtain a City of Kirkland business license or otherwise comply with Kirkland Municipal Code Chapter 7.02.

**XIV. FUTURE SUPPORT**

The City makes no commitment and assumes no obligations for the support of Artist activities except as set forth in this Agreement.

**XV. INDEPENDENT ARTIST**

Artist is and shall be at all times during the term of this Agreement an independent Artist and not an employee of the City. Artist agrees that they are solely responsible for the payment of taxes applicable to the services performed under this Agreement and agrees to comply with all federal, state, and local laws regarding the reporting of taxes, maintenance of insurance and records, and all other requirements and obligations imposed on them as a result of their status as an independent Artist. Artist is responsible for providing the office space and clerical support necessary for the performance of services under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance or unemployment compensation programs or otherwise assuming the duties of an employer with respect to the Artist or any employee of Artist.

**XVI. EXTENT OF AGREEMENT/MODIFICATION**

This Agreement, together with all attachments and addenda, represents the final and completely integrated Agreement between the parties regarding its subject matter and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument properly signed by both parties.

**XVII. ADDITIONAL WORK**

The City may desire to have the Artist perform work or render services in connection with the project other than provided for by the express intent of this Agreement. Any such work or services shall be considered as additional work, supplemental to this Agreement. This Agreement may be amended only by written instrument properly signed by both parties.

**XVIII. NON-ENDORSEMENT**

As a result of the selection of an Artist to supply services to the City, the Artist agrees to make no reference to the City in any literature, promotional material, brochures,

sales presentation or the like without the express written consent of the City.

**XIX. NON-COLLUSION**

By signature below, the Artist acknowledges that the person, firm, association, co-partnership or corporation herein named, has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in the preparation or submission of a proposal to the City for consideration in the award of a contract on the specifications contained in this Agreement.

**XX. WAIVER**

Waiver by the City of any breach of any term or condition of this Agreement shall not be construed as a waiver of any other breach.

**XXI. ASSIGNMENT AND SUBCONTRACT**

The Artist shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

**XXII. DEBARMENT**

Recipient certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written below:

ARTIST:

By: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF KIRKLAND:

By: \_\_\_\_\_  
Tracey Dunlap, Deputy City Manager

Date: \_\_\_\_\_



**CITY OF KIRKLAND**  
**City Manager's Office**  
**123 Fifth Avenue, Kirkland, WA 98033 425.587.3001**  
**www.kirklandwa.gov**

## MEMORANDUM

**To:** Kurt Triplett, City Manager  
**From:** Tracey Dunlap, Deputy City Manager  
**Date:** June 15, 2021  
**Subject:** PARK IMPACT FEE ADOPTION

### **RECOMMENDATION:**

City Council adopts phased-in increases to Park Impact Fees beginning on January 1, 2022. By approving the consent agenda, the ordinance will be adopted.

### **BACKGROUND DISCUSSION:**

Council received a briefing on the policy issues related to the results of the Park Impact Fee update on June 1, 2021 and provided direction on those issues as follows:

- Should the Park Impact Fee be increased and, if so, to what level?  
*Council Direction:* Increase fee by assessed value increase (80.74%), as shown in the table that follows.

	Single Family Residence	Multi-Family	Residential Suites
Kirkland (current)	\$ 4,435	\$ 3,371	\$ -
Kirkland (calculated maximum)	\$ 17,496	\$ 11,845	\$ 6,268
Kirkland (Council direction)	\$ 8,016	\$ 6,093	\$ 3,224

Note that Residential Suites have been subject to the Multi-Family fee previously, but this study calculated a lower fee specific to that use.

- When should the increases be effective?  
*Council Direction:* Phase-in the increase over 3 years, with first increase being effective on January 1, 2022.

Park Impact Fee Phasing	Current	Year 1	Year 2	Year 3
Single Family	4,435	5,629	6,822	8,016
Multi-family	3,371	4,278	5,185	6,093
Residential Suites	-	2,264	2,744	3,224



A three-year phase-in recognizes that the City will be updating its Comprehensive plan and the related master plans in 2022-2023. This update will extend the planning horizon to 2043, will recognize growth to date and revised growth targets, and will identify needed infrastructure to serve that growth. Staff recommends updating impact fees to reflect the revised plans.

- Should a non-residential Park Impact Fee be implemented?

*Council Direction:* Do not add a non-residential component to the Park Impact Fee at this time as it does not materially reduce the residential fees.

By approving the consent agenda on July 6, the attached ordinance implementing the fee increases will be adopted. Staff will return with a discussion of the policy issues associated with Transportation impact fees at the July 20 City Council meeting.

## ORDINANCE O-4761

## AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PARK IMPACT FEES.

1 WHEREAS, the Washington State Legislature passed the  
2 Growth Management Act of 1990 and 1991, RCW 36.70A et seq.  
3 and RCW 82.02 et seq. (the "Act"), which authorizes the collection  
4 of impact fees on development activity to provide for the creation  
5 and maintenance of publicly owned parks, open space, and  
6 recreation facilities to serve new development (hereinafter  
7 referred to as "park impact fees"); and

8  
9 WHEREAS, by Ordinance O-3703, the City Council of the  
10 City of Kirkland adopted its first park impact fee ordinance, which  
11 has since been amended; and

12  
13 WHEREAS, the City Council finds that new development will  
14 create additional demand and need for additional publicly owned  
15 parks, open space, and recreation facilities, and that the City's  
16 current park impact fees should be updated to meet this new and  
17 additional demand; and

18  
19 WHEREAS, the City prepared a study dated December 2020  
20 by FCS Group to set the City's new park impact fees. Based on  
21 this study the Council determines that the City's park impact fee  
22 rate schedule should be increased by the same percentage  
23 increase as the assessed value increase, which has increased  
24 80.74% since the City last set its rate schedule; and

25  
26 WHEREAS, Council wishes to phase in the new rate  
27 schedule over a three-year period with the first increase being  
28 effective on January 1, 2022; the second increase being effective  
29 on January 1, 2023; and the third increase being effective on  
30 January 1, 2024. A three-year phase-in recognizes that the City  
31 will be updating its Comprehensive Plan and the related master  
32 plans in 2022-2023. This update will extend the planning horizon  
33 to 2043, will recognize growth to date and revised growth targets,  
34 and will identify needed public parks, open space and recreation  
35 facilities to serve that growth; and

36  
37 WHEREAS, Council has chosen not to add a non-residential  
38 component to the park impact fee at this time as Council has  
39 determined it will not materially reduce the residential fees; and

40  
41 WHEREAS, the City previously included the development of  
42 residential suites in the same category as multi-family  
43 development, but is including it as a separate category now as the  
44 new study calculated a lower fee specific to that use; and  
45

WHEREAS, impact fees may only be imposed for "system improvements," meaning public capital facilities in the City's capital facilities plan that are designed to provide service to the community at large (not private facilities), are reasonably related to new development, and will benefit from the new development, WAC 365-196-850; and

WHEREAS, the Act states that impact fees may only be collected for system improvements which are addressed by a capital facilities element of a comprehensive land use plan; and

WHEREAS, the City has prepared a Capital Facilities Plan in compliance with the Act and has plans to update the Capital Facilities Plan in the future to support the phased increases to the park impact fee rate schedule.

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

Section 1. Kirkland Municipal Code Section 27.06.120 is amended to read as follows:

**27.06.120 Review of schedule and fee increases.**

~~(a) The schedule in Section 27.06.150 will be amended to reflect changes to the capital facilities plan in Chapter XIII of Title 17 of this code (the comprehensive plan). Amendments to the schedule for this purpose shall be adopted by the council.~~

~~(ab) The fees on the schedule in Section 27.06.150 shall~~ may be indexed to provide for an automatic fee increase each January 1st beginning in the year ~~2017~~ 2025. The June to June Seattle-Tacoma-Bremerton-Bellevue Area Consumer Price Index (CPI-W) will be used to determine the increase in fees for each year to reflect increased project costs. In the event that the fees on the schedule in Section 27.06.150 are increased during the preceding calendar year due to ~~changes to the capital facilities plan~~ a new rate study pursuant to subsection (ab) of this section, the fees will not be indexed the following January. The finance and administration department shall compute the fee increase and the new schedule shall become effective immediately after the annual fee increase calculation.

~~(be)~~ A new rate study, which establishes the schedule in Section 27.06.150, shall be updated every three years, unless the city determines that circumstances do not warrant an update.

Section 2. Kirkland Municipal Code Section 27.06.150 is amended to read as follows:

**27.06.150 Fee schedule.**

The impact fee schedule below is based on the city's latest rate study. The fee for each year is effective as of January 1<sup>st</sup> of that year. As authorized under Section 27.06.120(b), the schedule may

97 automatically increase each January 1st based on the CPI-W

### **~~Park Impact Fee Schedule~~**

<b><del>Type of Land Use</del></b>	<b><del>Impact Fee</del></b>	<b><del>Per Unit</del></b>
<del>Detached unit</del>	<del>\$3,968</del>	<del>Dwelling unit</del>
<del>Attached, stacked, senior or assisted living unit development, and cottage, carriage and two-/three-unit homes approved under Chapter 113-KZC</del>	<del>\$3,015</del>	<del>Dwelling unit</del>

98 Index: See the public works department's fee schedule for the  
 99 current impact fee.

100  
101

<u>Park Impact Fee Schedule</u>	<u>Unit</u>	<u>Current Fee</u>	<u>Year 2022 Fee</u>	<u>Year 2023 Fee</u>	<u>Year 2024 Fee</u>
<u>Single-Family Residential</u>	<u>Per Dwelling Unit</u>	<u>\$4,435</u>	<u>\$5,629</u>	<u>\$6,822</u>	<u>\$8,016</u>
<u>Multifamily</u>	<u>Per Dwelling Unit</u>	<u>\$3,371</u>	<u>\$4,278</u>	<u>\$5,186</u>	<u>\$6,093</u>
<u>Residential Suites</u>	<u>Per Dwelling Unit</u>	<u>\$0</u>	<u>\$2,264</u>	<u>\$2,744</u>	<u>\$3,224</u>

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

106  
 107 Section 4. This ordinance shall be in force and effect five  
 108 days from and after its passage by the Kirkland City Council and  
 109 publication pursuant to Section 1.08.017, Kirkland Municipal Code  
 110 in the summary form attached to the original of this ordinance and  
 111 by this reference approved by the City Council.

112           Passed by majority vote of the Kirkland City Council in open  
113 meeting this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

114  
115           Signed in authentication thereof this \_\_\_\_\_ day of  
116 \_\_\_\_\_, 2021.

\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

\_\_\_\_\_  
Kathi Anderson, City Clerk

Approved as to Form:

\_\_\_\_\_  
Kevin Raymond, City Attorney

PUBLICATION SUMMARY  
OF ORDINANCE NO. 4761

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PARK  
IMPACT FEES.

SECTION 1. Amends Kirkland Municipal Code Section  
27.06.120 related to park impact fee schedule review and fee increases.

SECTION 2. Amends Kirkland Municipal Code Section  
27.06.150 by amending rates for park impact fees.

SECTION 3. Provides a severability clause for the ordinance.

SECTION 4. Authorizes publication of the ordinance by  
summary, which summary is approved by the City Council pursuant to  
Section 1.08.017 Kirkland Municipal Code and establishes the effective  
date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to  
any person upon request made to the City Clerk for the City of Kirkland.  
The Ordinance was passed by the Kirkland City Council at its meeting  
on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

I certify that the foregoing is a summary of Ordinance 4761  
approved by the Kirkland City Council for summary publication.

\_\_\_\_\_  
Kathi Anderson, City Clerk

**CITY OF KIRKLAND****Department of Parks and Community Services****123 Fifth Avenue, Kirkland, WA 98033 425.587.3300****[www.kirklandwa.gov](http://www.kirklandwa.gov)**

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**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Mary Gardocki, Park Planning & Development Manager  
Lynn Zwaagstra, Director of Parks & Community Services

**Date:** July 6, 2021

**Subject:** Juanita Heights Park Expansion: Authorization to Execute a Purchase and Sale Agreement for Acquisition of the Emmel Property

**RECOMMENDATION:**

It is recommended that the City Council approve the attached Resolution authorizing the City Manager to execute a purchase and sale agreement in the amount of \$72,000 for the acquisition of the 0.10 acre Emmel Property to expand Juanita Heights Park and Billy Goat Trail. Funding for the purchase by the City will be fully reimbursed through a combination of King County CFT grant funds and PKC1350300 – Juanita Heights Park Trail: Feasibility, Acquisition and Development.

**BACKGROUND DISCUSSION:**

Juanita Heights Park is located in Kirkland's Finn Hill Neighborhood. The original 3.44 acre property was transferred to the City by King County following annexation in 2011. The park has since been expanded by the City to encompass a total of 10.74 acres through acquisition of 11 additional tax parcels.

The attached Resolution would authorize the City Manager to execute a Purchase and Sale Agreement for acquisition of additional land to expand Juanita Heights Park. The Emmel Property (**Attachment A**) is comprised of one tax parcel totaling .10 acres of undeveloped and forested open space. Acquisition of the parcel would expand Juanita Heights Park as vital open space, recreation, and enhanced trail connectivity. Expansion of Juanita Heights Park is acknowledged in the City's adopted Parks, Recreation, and Open Space (PROS) Plan and is also identified in the recently adopted Finn Hill Neighborhood Plan.

The property owner has agreed to a purchase price of \$72,000, the King County Assessor's Office appraised value.

**Funding**

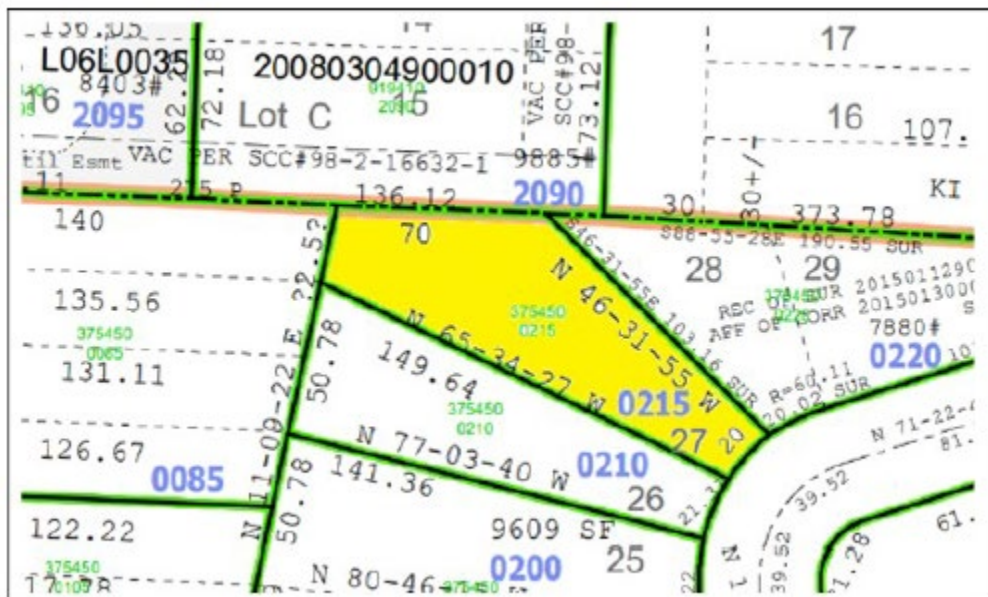
The initial funding source for the City's acquisition of the property is proposed to be Juanita Heights CIP project. One half (\$36,000) of the purchase price would be reimbursed through a grant awarded by King County's Conservation Futures Tax (CFT) Grant Match Program. The other one half (\$36,000) would be funded from local funding in the Juanita Heights CIP project. The attached fiscal note (**Attachment B**) shows the appropriation of the grant in the amount of

\$166,902 and the authorization of the land acquisition. \$166,902 represents the total CFT funding available. This purchase will utilize \$36,000, leaving \$130,902 remaining for future land acquisition.

Attachments:

Attachment A – Parcel Map  
Resolution  
Exhibit A to Resolution– Purchase and Sale Agreement  
Attachment B – Fiscal Note





Plat Map



## RESOLUTION R-5481

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL PROPERTY PURCHASE AND SALE AGREEMENT FOR ACQUISITION OF PROPERTY TO EXPAND JUANITA HEIGHTS PARK.

WHEREAS, property owned by Dorothy Emmel ("Property") is aligned as a potential trail head at Juanita Heights Park and is desired for public park purposes, to expand public use and enjoyment, protect natural resources, and enhance neighborhood connectivity; and

WHEREAS, expansion of Juanita Heights Park to preserve the existing forest is identified in the City of Kirkland Parks, Recreation, and Open Space (PROS) Plan and further identified in the adopted Finn Hill Neighborhood Plan; and

WHEREAS, the trails connections are supported through the Finn Hill Neighborhood Plan; and

WHEREAS, the City of Kirkland has obtained a grant from the King County Conservation Futures Tax Grant Program to reimburse the City for an additional one-half of the Property's purchase price; and

WHEREAS, staff has negotiated a proposed Purchase and Sale Agreement ("Agreement") for acquisition of the Property for the total amount of \$72,000 as provided in the attached Exhibit A.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Kirkland a Real Property Purchase and Sale Agreement for the Property substantially similar to that attached to this Resolution as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting on the \_\_\_\_ day of \_\_\_\_\_, 2021.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

\_\_\_\_\_  
Kathi Anderson, City Clerk

**REAL PROPERTY PURCHASE AND SALE AGREEMENT**

This Agreement made this 9<sup>th</sup> day of June, 2021 ("Effective Date"), by and between the City of Kirkland, a municipal corporation of the State of Washington, ("Buyer" or "the City") and the heirs and devisees of Dorothy Emmel, deceased, through her estate's personal representative ("Seller").

For and in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. Purchase of Real Property. Seller and Buyer hereby agree to the purchase and sale of the real property in the City of Kirkland, King County tax parcel number 375450-0215, and legally described as:

Lot 27, Block 3, Juanita Beach Camps, according to the plat thereof recorded in Volume 32 of Plats, pages 25, 26, 27 and 28, records of said county.

("Property"), together with all of Seller's right, title and interest in all structures, fixtures, buildings and improvements situated on the land.

2. Purchase Price and Covenant; Payment. The Purchase Price for the Property shall be 72,000 and 00/100 Dollars (\$72,000.00). Buyer shall deposit the Purchase Price with the Escrow Holder at or before Closing.
3. Escrow Holder. Promptly following the execution of this Agreement, Buyer shall open an escrow with Chicago Title Insurance Company (the "Escrow Holder"). A copy of this Agreement shall be provided to the Escrow Holder to advise the Escrow Holder of the terms and conditions hereof. Escrow Holder shall conduct the Closing pursuant to escrow instructions of the Parties which shall be consistent herewith.
4. Title Policy and Condition of Title. Seller authorizes Buyer, its Lender, Listing Agent, Selling Licensee and Closing Agent, at Seller's expense, to apply for and deliver to Buyer an extended coverage owner's policy of title insurance. The title report shall be issued by Chicago Title Insurance Company. Buyer shall notify Seller of any objectionable matters in the title report or any supplemental report within the earlier of 20 days after mutual acceptance of this Agreement or the expiration of the Feasibility Period. This Agreement shall terminate unless within 10 days of Buyer's notice of such objections: (1) Seller agrees to remove all objectionable provisions; or (2) Buyer notifies Seller that Buyer waives any objections which Seller does not agree to remove. If any new title matters are disclosed in a supplemental title report, then the preceding termination, objection and waiver provisions shall apply to the new title matters except that Buyer's notice of objections must be delivered within 5 days of delivery of the supplemental report and Seller's response or Buyer's waiver must be delivered within 2 days of Buyer's notice of objections.

The closing date shall be extended to the extent necessary to permit time for these notices. Buyer shall not be required to object to any mortgage or deed of trust liens, the statutory lien for real property taxes, or any estate tax or medical care-related liens, and the same shall not be deemed to be Permitted Exceptions; provided that the lien securing any financing which Buyer has agreed to assume shall be a permitted exception. Except for the foregoing, those provisions not objected to or for which Buyer waived its objections shall be referred to collectively as the "Permitted Exceptions." Seller shall cooperate with Buyer and the title company to clear objectionable title matters but shall not be required to incur any out-of-pocket expenses or liability other than payment of monetary encumbrances not assumed by Buyer and proration of any real property taxes, and Seller shall provide an owner's affidavit containing the information and reasonable covenants requested by the title company. The title policy shall contain no exceptions other than the General Exclusions and Exceptions common to such policies, the Covenant and the Permitted Exceptions.

5. Closing. This sale shall be closed on or before June 30, 2021, ("Closing") by Chicago Title Insurance Company, 11900 NE 1<sup>st</sup> Street, Building G, Suite 110, Bellevue, WA 98005 ("Closing Agent"). Buyer and Seller shall deposit with Closing Agent by noon on the scheduled closing date all instruments and monies required to complete the purchase in accordance with this Agreement. Closing shall be deemed to have occurred when the deed is recorded and the sale proceeds are available to Seller. Time is of the essence in the performance of this Agreement. This Agreement is intended to constitute escrow instructions to Closing Agent. Buyer and Seller will provide any supplemental instructions requested by Closing Agent provided that the same are consistent with this Agreement. Buyer is entitled to possession on closing.
6. Closing Costs. Seller shall deliver any information reasonably requested by Closing Agent to allow Closing Agent to prepare a settlement statement for closing. Seller shall pay the premium for the owner's standard coverage title policy. Buyer shall pay the excess premium attributable endorsements requested by Buyer and the cost of any survey required in connection with the same. Seller and Buyer shall each pay one-half of the escrow fees. Real estate excise taxes, if any, shall be paid by Seller. Real and personal property taxes and assessments payable in the year of closing; collected rents on any existing tenancies; interest; utilities; and other operating expenses shall be pro-rated as of closing. Buyer shall pay to Seller at closing an additional sum equal to any utility deposits for which Buyer receives the benefit after closing. Buyer shall pay all sales or use tax applicable to the transfer of personal property included in the sale. Pursuant to RCW 60.80, Buyer and Seller request the Closing Agent to administer the disbursement of closing funds necessary to satisfy unpaid utility charges affecting the Property.
7. Post-Closing Adjustments, Collections and Payments. After closing, Buyer and Seller shall reconcile the actual amount of revenues or liabilities upon receipt or payment thereof to the extent those items were prorated or credited at closing based on estimates. Any bills or invoices received by Buyer after closing shall be paid by Seller upon presentation of such bill or invoice.

8. Assurance. Seller shall not enter into any lease, trust deed, mortgage, restriction, encumbrance, lien, license or other instrument or agreement affecting the Property without the prior written consent of Buyer from and after the date of this Agreement.
9. Seller's Representations. Except as disclosed to or known by Buyer prior to the date of this Agreement, including in the books, records and documents made available to Buyer, or in the title report or any supplemental report or documents referenced therein, Seller represents to Buyer that, to the best of Seller's actual knowledge, each of the following is true as of the date hereof:
  - (a) The heirs and devisees of Dorothy Emmel, deceased, are the sole legal owners of the fee simple interest in the Property;
  - (b) Seller is authorized to enter into the Agreement, to sell the Property and to perform its obligations under this Agreement;
  - (c) No person or entity has a first right of refusal or option to purchase or other similar right to or interest in the Property;
  - (d) The books, records, leases, agreements and other items delivered to Buyer pursuant to this Agreement, if any, comprise all material documents in Seller's possession or control regarding the operation and condition of the Property;
  - (e) There is no pending or threatened litigation which would adversely affect the Property or Buyer's ownership thereof after closing;
  - (f) There is no pending or threatened condemnation or similar proceedings affecting the Property by any governmental entity other than the City of Kirkland;
  - (g) Seller has paid (except to the extent prorated at closing) all local state and federal taxes, if any, (other than real and personal property taxes and assessments described above), if any, attributable to the period prior to closing which, if not paid, could constitute a lien on the Property (including any personal property), or for which Buyer may be held liable after closing;
  - (h) Seller has paid, or will prior to closing pay, all estate taxes that, if not paid, could constitute a lien on the Property or for which Buyer may be held responsible after closing.
  - (i) Seller has paid, or will prior to closing pay, all costs of medical care that could be subject to estate recovery by the State of Washington or that, if not paid, could constitute a lien on the Property or for which Buyer may be held responsible after closing.
10. Condition of Property As-Is. Except for those representations and warranties specifically included in this Agreement, (a) Seller makes no representations or warranties regarding the Property; (b) Seller hereby disclaims, and Buyer hereby waives, any and all representations or warranties of any kind, express or implied, concerning the Property or any portion thereof and the improvements, as to its condition, value, compliance with laws, status of permits or approvals, existence or absence of hazardous material on site, occupancy rate or any other matter of similar or dissimilar nature relating in any way to the Property, including the warranties of fitness of a particular purpose, tenantability, habitability and use; (c) Buyer otherwise takes the Property "As Is;" and (d) Buyer represents and warrants to Seller that Buyer has sufficient experience and expertise such that it is reasonable for Buyer to rely on its own pre-closing inspections and investigations.



11. Casualty. Seller bears the risk of loss until Closing, and thereafter Buyer shall bear the risk of loss. Buyer may terminate this Agreement and Seller will not be entitled to remedies if the improvements are destroyed or materially damaged by casualty before Closing. Damage will be considered material if the cost of repair exceeds the lesser of \$15,000 or five percent of the purchase price stated in this Agreement. Alternatively, Buyer may elect to proceed with Closing in which case at closing Seller shall assign to Buyer all claims and right to proceeds under any property insurance policy and shall credit to Buyer at Closing the amount of any deductible provided for in the policy.
12. FIRPTA-Tax Withholding at Closing. Closing Agent is instructed to prepare a certification that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act. Seller agrees to sign this certification.
13. Conveyance. Title shall be conveyed by a Personal Representative's Bargain and Sale Deed subject only to the Permitted Exceptions and the Covenant.
14. Agency Disclosure. At the signing of this Agreement, neither Seller or Buyer are represented by a real estate agent and, therefore, no commission is due any agent.
15. Assignment. Buyer may not assign this Agreement to any other party.
16. Remedies. In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then Seller may terminate this Agreement and the Buyer will pay Seller \$1,500.00 as liquidated damages as the sole and exclusive remedy available to Seller for such failure. In the event Seller fails, without legal excuse, to complete the sale of the Property, then, as Buyer's sole remedy, Buyer may either (a) terminate this Agreement; or (b) bring suit to specifically enforce this Agreement and recover incidental damages provided Buyer must file suit within 60 days of the scheduled date of closing or any earlier date Seller has informed Buyer in writing that Seller will not proceed with Closing.
17. Information Transfer. In the event this Agreement is terminated, Buyer agrees to deliver to Seller within 10 days of Seller's written request, copies of all materials received from Seller and any non-privileged plans, studies, reports inspections, appraisals, surveys, drawings, permits application or other development work product relating to the Property in Buyer's possession or control as of the date this Agreement is terminated.
18. Binding. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto and shall inure to the benefit of them. This Agreement and any addenda and exhibits to it state the entire understanding of the Buyer and Seller regarding the sale of the Property. There are no verbal or other written agreements which modify or affect this Agreement.
19. Counterparts. The parties may execute this Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. A facsimile or electronic mail transmission shall be binding on the party or parties whose signatures appear thereon. If so executed, each counterpart is to be

deemed an original for all purposes, and all counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart. Electronic delivery of documents (such as fax or email) shall be legally sufficient to bind the party the same as delivery of an original.

EXECUTED to be effective as of the date listed above.

**City of Kirkland (BUYER)**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney

**(SELLER)**

By: Krista MacLaren

Print Name: Krista MacLaren

Its: Personal Representative  
of the Estate of Dorothy Emmel

FILED

2019 APR 23 AM 11:21

KING COUNTY  
COURT CLERK  
SEATTLE, WACERTIFIED  
COPYIN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

IN RE THE ESTATE OF  <u>DOROTHY ANN EMMEL</u>  DECEASED	NO: 19-4-08875-1 SEA  LETTERS TESTAMENTARY (LTRTS)
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The last will of the above named decedent was duly exhibited, proven and filed on April 23, 2019.  
It appears in and by said will that KRISTA J. MACLAREN is/are named Executor(s) and by order  
of this court is/are authorized to execute said will according to law.

WITNESS my hand and seal of said Court: April 23, 2019.

BARBARA MINER  
King County Superior Court ClerkBy:  Deputy Clerk  
K. Rich

• NOT OFFICIAL WITHOUT SEAL •

I BARBARA MINER Clerk of the Superior Court of the State of Washington  
for King County do hereby certify that this copy is a true and perfect transcript  
of said original as it appears on file and of record in my office and of the whole  
thereof IN TESTIMONY WHEREOF I have affixed this seal of said Superior  
Court at my office at Seattle on this date APR 23 2019



BARBARA MINER Superior Court Clerk

By: **K. RICH**   
Deputy Clerk



**FISCAL NOTE***CITY OF KIRKLAND*

Source of Request							
Lynn Zwaagstra, Director of Parks and Community Services							
Description of Request							
Recognize \$166,902 in grant revenue from King County Conservation Futures Tax (CFT) and authorize a purchase and sale agreement in the amount of \$72,000 for the acquisition of the 0.10 acre Emmel Property to expand Juanita Heights Park and Billy Goat Trail for the Juanita Heights Park Trail: Feasibility, Acquisition and Development project (PKC1350300).							
Legality/City Policy Basis							
Fiscal Impact							
One-time appropriation of new grant revenue. This will add \$166,902 to the General Capital Fund (310) for PKC1350300. This will increase the PKC1350300 project budget to \$410,703. The available balance is \$398,203.							
Recommended Funding Source(s)							
	Description	2020 Est End Balance	Prior Auth. 2019-20 Uses	Prior Auth. 2019-20 Additions	Amount This Request	Revised 2020 End Balance	2020 Target
<b>Reserve</b>							
<b>Revenue/Exp Savings</b>	New unbudgeted grant revenue adding \$166,902 in new appropriations in the General Capital Fund (310). Revenue account numbers - 310*337081						
<b>Other Source</b>							
Other Information							

Prepared By	Andrea Peterman, Budget Analyst	Date	June 22, 2021
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**CITY OF KIRKLAND**  
**Planning and Building Department**  
123 Fifth Avenue, Kirkland, WA 98033  
[www.kirklandwa.gov](http://www.kirklandwa.gov)

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## **MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Adam Weinstein, AICP, Director of Planning and Building  
Dawn Nelson, Planning Manager

**Date:** June 21, 2021

**Subject:** 434 KIRKLAND BOARDWALK CONDITIONAL CERTIFICATE FOR MULTIFAMILY PROPERTY TAX EXEMPTION, FILE HSG19-00622

## **RECOMMENDATION**

It is recommended that the City Council approve the enclosed resolution as part of the consent agenda, authorizing the Planning and Building Director to:

- Enter into a contract with MRM Kirkland, LLC for a potential multifamily housing property tax exemption (Exhibit A to the Resolution); and
- Issue a conditional certificate of acceptance of tax exemption.

## **BACKGROUND DISCUSSION**

The Multifamily Housing Property Tax Exemption (MFTE) is one of two parts of the incentive offered by the City of Kirkland to market rate housing developers to offset the cost of the inclusion of affordable housing units within their developments. The City Council adopted the affordable housing requirement, where at least 10 percent of new housing units in most multifamily and mixed-use developments must be affordable, with an aggressive level of affordability required for rental units at 50% of King County median income. This provides ten percent of multifamily housing units that are significantly more affordable than new market rate units, which typically have rents that are only affordable to those who earn at least 80% of median income, and often more. The tax exemption is granted for eight years, while the affordability requirement remains in perpetuity.

The other incentive element created by the City is an increase in development capacity, which is accomplished through increases in height or density as written into the Zoning regulations for multifamily and mixed-use zones. In zoning districts where affordable housing is not required, the MFTE remains as an incentive to encourage the creation of affordable housing, with relaxed but still significant affordability levels required.

The City's inclusionary zoning program has been in place since 2010 and has resulted in the construction of 112 units of affordable housing and payment of \$6.3 million into an in-lieu fund,

434 Kirkland Boardwalk Conditional Certificate for  
Multifamily Property Tax Exemption  
Page 2

with another 140 affordable units under construction, and 560 affordable units in the development pipeline. To date, MFTE has been used ten times: twice in voluntary situations in the North Rose Hill Business District, once in the Central Business District, and seven times as part of projects where affordable housing was required.

The MFTE regulations allow applicants of projects that include a minimum of four new multifamily units in defined geographic areas to request an exemption from ad valorem taxes (i.e., property taxes levied on real estate) on the residential improvement value in exchange for providing affordable housing. The City allows an eight-year exemption if at least 10 percent of the units in a project are affordable, and a twelve-year exemption if at least 20 percent of the units are affordable. While the tax exemption ends after the prescribed period, the affordability requirement remains in perpetuity. The length of the exemption is established by Revised Code of Washington (RCW) 84.14. The current regulations are included in Kirkland Municipal Code (KMC) 5.88. Additional background information about the financial implications of the program is available in the [June 7, 2011 City Council presentation](#).

#### *434 Kirkland Boardwalk MFTE*

The 434 Kirkland Boardwalk project, located at 434 Kirkland Way, is a mixed-use project including 171-unit multifamily residential apartment units built over 20,000 square feet of retail space (see Attachments 1 and 2). The project includes a mix of studio, one-bedroom and two-bedroom units ranging in size from 412 square feet to 1,529 square feet. The 17 proposed affordable units include a mix of unit types in proportion to the market rate units (see Attachment 3). The affordable units are required to be affordable to those who earn no more than 50% of King County median income. The affordability required in exchange for the tax exemption must remain for the life of the project and is secured by the agreements attached to the contract. The tax relief provided is from the ad valorem taxes on all of the residential improvement value on the property for eight years. Taxes are still collected on the land and any non-residential improvements.

The process for approving an MFTE includes the following steps:

- Review and approval of application for conditional certificate for tax exemption by the Planning and Building Director – *completed on June 14, 2021*
- Approval of resolution to enter into contract with City – *pending action by City Council on July 6, 2021*

#### *Actions to occur following approval of the resolution:*

- Execution of contract and issuance of conditional certificate of acceptance of tax exemption
- Recording of covenant that addresses long term affordability requirements (Exhibit D to contract)

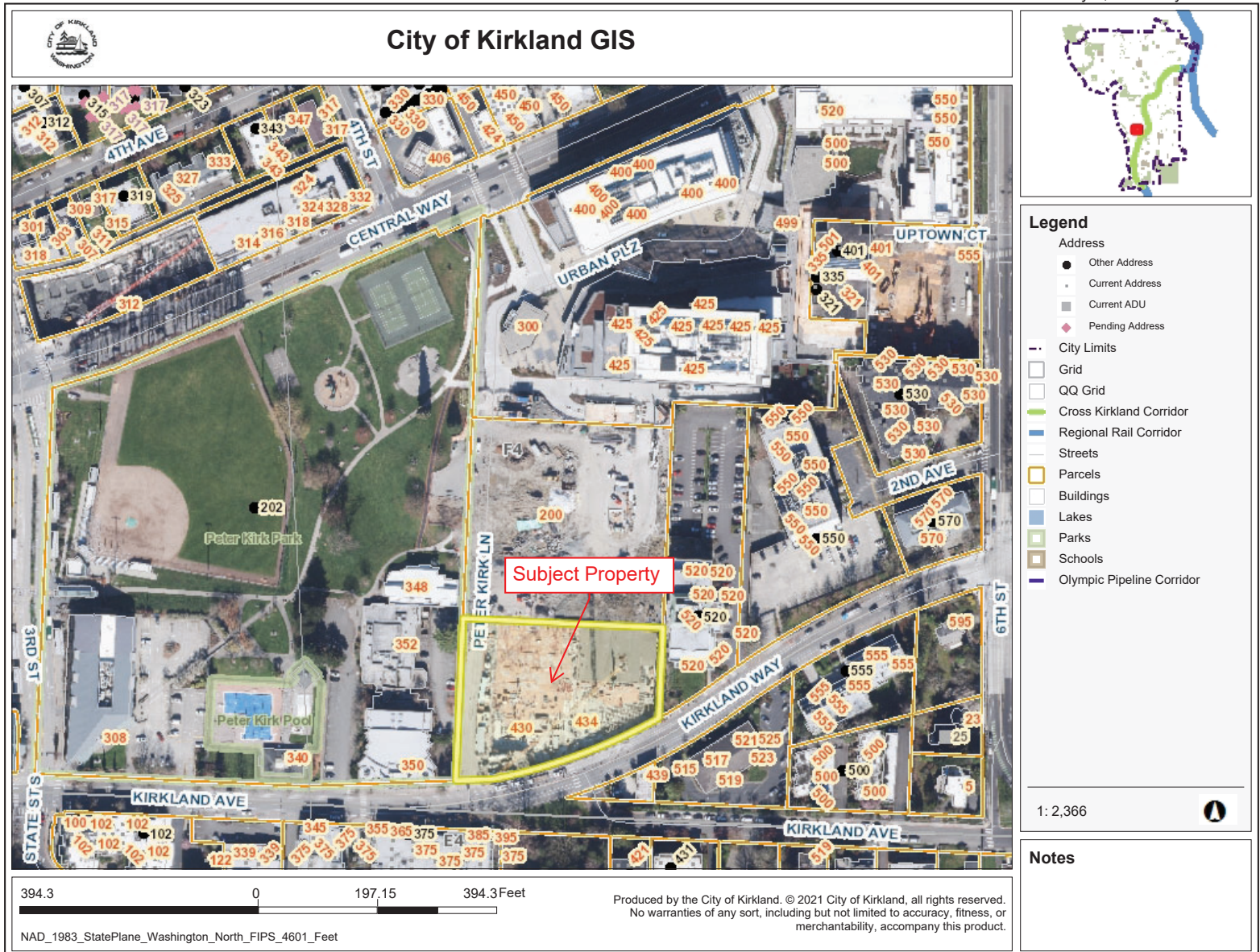
- Upon completion of construction, submittal of initial compliance report and request for final certificate for tax exemption and review by Planning and Building Director;
- If the Director determines that the project has met all requirements of Chapter 5.88 KMC, Chapter 84.14 RCW, and the contract, issuance of final certificate of tax exemption and filing with the King County Assessor;
- Submittal of annual compliance report by property owner containing at a minimum the following:
  - a. A statement of the occupancy and vacancy of the Multifamily Housing units during the previous year;
  - b. A statement that the Multifamily Housing has not changed use since the date of filing of the Final Certificate;
  - c. A statement that the Multifamily Housing continues to be in compliance with this Agreement and the requirements of Chapter 5.88 KMC;
  - d. A description of any improvements or changes to the Project made after the filing of the Final Certificate or the previous certification;
  - e. A statement of the change in ownership of all or any part of the property since the Final Certificate was filed; and
  - f. Information and documentation sufficient to demonstrate, to the satisfaction of the Director, compliance with the affordability requirements of KMC 5.88.090 and this Agreement, which shall, at minimum, include the following:
    - (1) Identification of each Affordable Unit, and any substitution of Affordable Units during the previous year, and for each Affordable Unit, the current Household Income limits and maximum allowed rent.
    - (2) For each Affordable Unit that was initially occupied or that had a change of tenancy during the previous year, the date of each tenant's initial occupancy, the household size and Household Income of each tenant household at initial occupancy, and the rent charged at initial occupancy.
    - (3) For each Affordable Unit that was occupied by the current tenant prior to the previous year, the date of each tenant's initial occupancy, the tenant's current Household Income, the tenant's Household Income at initial occupancy, and current contract rent.

#### ATTACHMENTS

1. Vicinity Map
2. 434 Kirkland Boardwalk Site Plan
3. 434 Kirkland Boardwalk Unit Mix

ATTACHMENT 1

434 Kirkland Boardwalk  
MFTE  
July 6, 2021 City Council





ATTACHMENT 2  
434 Kirkland Boardwalk  
MFTE  
July 6, 2021 City Council

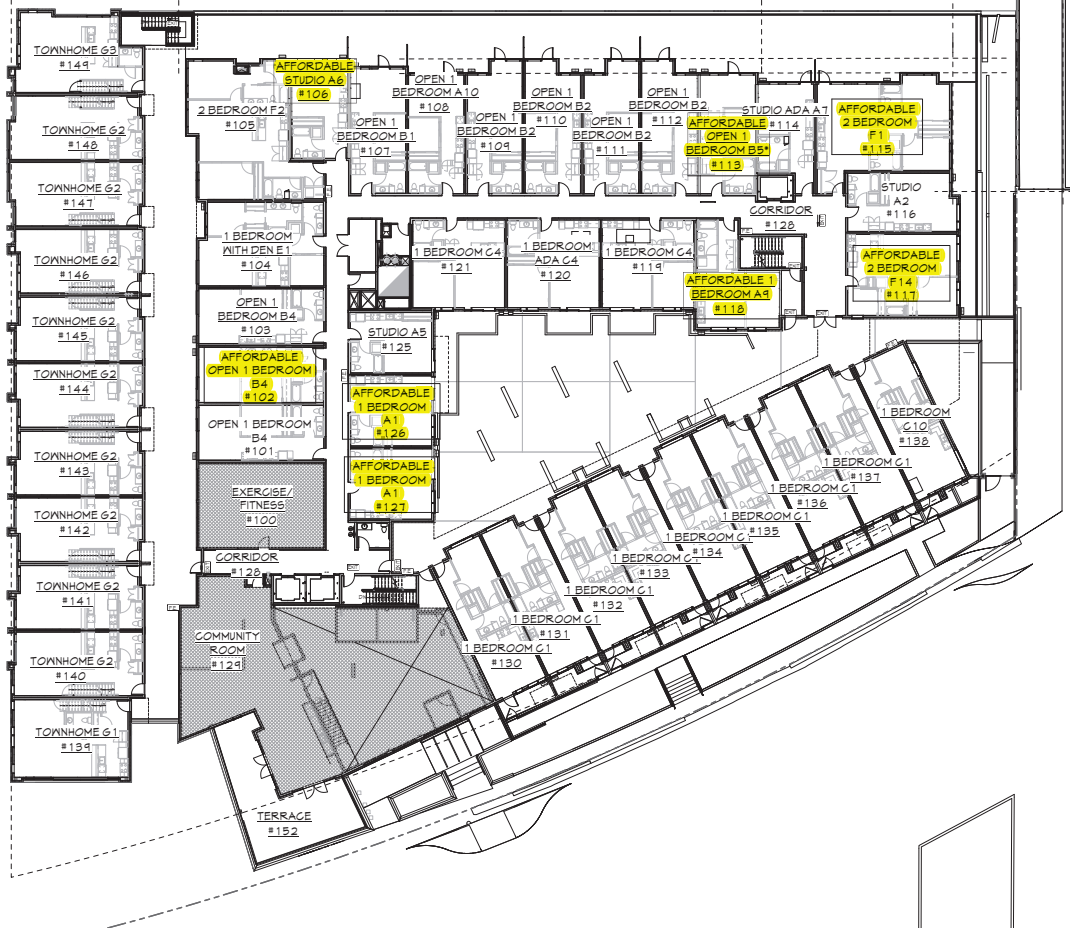


## 434 KIRKLAND WAY MIXED USE

DESIGN REVIEW MODIFICATION  
SUBMITTAL DATE: Apr 19, 2019

baylis ARCHITECTS

ATTACHMENT 2  
434 Kirkland Boardwalk  
MFTE  
July 6, 2021 City Council



434 KIRKLAND  
WAY MIXED USE  
KIRKLAND, WA 98033

CONSTRUCTION  
DOCUMENTS  
6/08/2021

PROJECT NUMBER: 18-0317  
PROJECT MANAGER: Checker  
DRAWN BY: Author

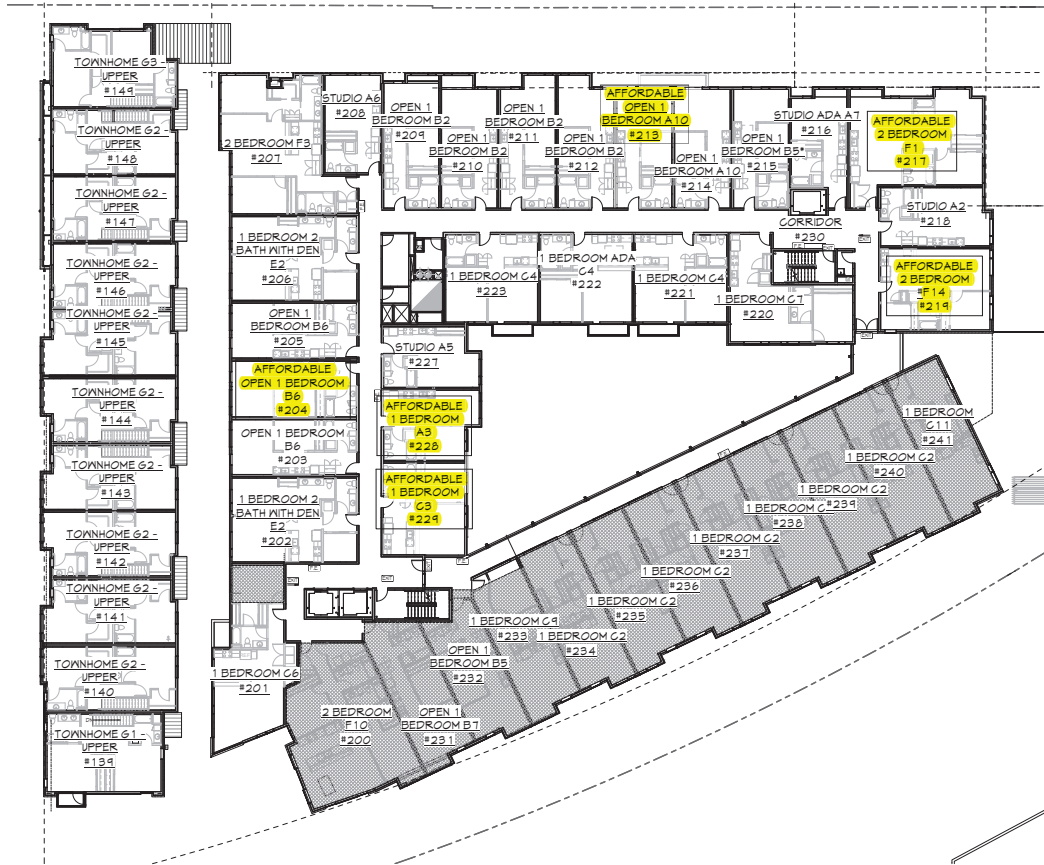
NO.	DESCRIPTION	DATE
1	Rev Comments Copy	6/8/21
2		6/10/21
3		6/11/21
4		6/12/21
5		6/13/21
6		6/14/21
7		6/15/21
8		6/16/21
9		6/17/21
10		6/18/21

baylis  
1801 Main Street, #101 Bellevue WA 98005  
BaylisArchitects.com | 206.454.8888

LEVEL L1 75.5' -  
RESIDENTIAL  
AFFORDABLE HOUSING

A160

ATTACHMENT 2  
434 Kirkland Boardwalk  
MFTE  
July 6, 2021 City Council



434 KIRKLAND BOARDWALK  
KIRKLAND, WA 98033

434 KIRKLAND  
WAY MIXED USE  
KIRKLAND, WA 98033

CONSTRUCTION  
DOCUMENTS  
6/08/2021

PROJECT NUMBER: 18-0317  
PROJECT MANAGER: Checker  
DRAWN BY: Author

NO.	DESCRIPTION	DATE
1	Rev Comments Copy	6/8/21
2		6/10/21
3		6/10/21
4		6/10/21
5		6/10/21
6		6/10/21
7		6/10/21
8		6/10/21
9		6/10/21
10		6/10/21

baylis  
ARCHITECTS

1801 Main Street, #101 Bellevue WA 98005  
BaylisArchitects.com | 206.454.8888

LEVEL L2 85.5' -  
RESIDENTIAL  
AFFORDABLE HOUSING

A161



ATTACHMENT 2  
434 Kirkland Boardwalk  
MFTE  
July 6, 2021 City Council

434 KIRKLAND BOARDWALK  
WAY MIXED USE  
KIRKLAND, WA 98033

434 KIRKLAND  
WAY MIXED USE  
KIRKLAND, WA 98033

CONSTRUCTION  
DOCUMENTS  
6/08/2021

PROJECT NUMBER: 18-0317  
PROJECT MANAGER: Checker  
DRAWN BY: Author

NO.	DESCRIPTION	DATE
1	ISSUED	03/11/21

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ARCHITECTS  
1801 Main Street, #100 Bellevue WA 98005  
baylisarchitects.com | 206.454.6888

LEVEL L3 95.5' -  
RESIDENTIAL  
AFFORDABLE HOUSING

A162



**434 Kirkland Boardwalk  
Dwelling Unit Mix**

<b>Unit Type (Bedrooms)</b>	<b>Affordable Units</b>	<b>Total Units</b>
Studio	2	24
1-bedroom	11	111
2-bedroom	4	36
<b>Total</b>	<b>17</b>	<b>171</b>

## RESOLUTION R-5482

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO ENTER INTO A CONTRACT WITH MRM KIRKLAND, LLC, REGARDING A POTENTIAL MULTIFAMILY HOUSING PROPERTY TAX EXEMPTION, AND APPROVING THE ISSUANCE OF A CONDITIONAL CERTIFICATE OF TAX EXEMPTION.

1 WHEREAS, MRM Kirkland, LLC, has applied for a limited property  
2 tax exemption as provided for in Chapter 84.14 RCW and Chapter 5.88  
3 KMC for multifamily residential rental housing ("Multifamily Housing") in  
4 the Moss Bay Residential Targeted Area, and the Director of Planning  
5 and Building has approved the application; and  
6

7 WHEREAS, MRM Kirkland, LLC has submitted to the City  
8 preliminary site plans and floor plans for one hundred seventy one (171)  
9 units of new Multifamily Housing to be constructed on property situated  
10 at 434 Kirkland Way, Kirkland, Washington; and  
11

12 WHEREAS, the Director has determined the multifamily housing  
13 will, if completed, occupied, and owned as proposed, satisfy the  
14 requirements for a Final Certificate of Tax Exemption by providing 17  
15 units of housing affordable to those who earn no more than 50% of  
16 King County median income as required by the City.  
17

18 NOW, THEREFORE, be it resolved by the City Council of the City  
19 of Kirkland as follows:  
20

21 Section 1. The City Manager or designee is authorized and  
22 directed to execute on behalf of the City of Kirkland, an agreement  
23 substantially similar to that attached as Exhibit "A", which is entitled  
24 "Multifamily Housing Limited Property Tax Exemption Agreement" and  
25 to issue a Conditional Certificate of Acceptance of Tax Exemption.  
26

27 Passed by majority vote of the Kirkland City Council in open  
28 meeting this \_\_\_\_ day of \_\_\_\_\_, 2021.  
29

30 Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_,  
31 2021.

\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

\_\_\_\_\_  
Kathi Anderson, City Clerk

**MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION CONTRACT****434 KIRKLAND BOARDWALK**

THIS CONTRACT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the City of Kirkland, a State of Washington municipal corporation ("City") and MRM Kirkland LLC, a Washington limited liability company ("Applicant"), and incorporated attachments and exhibits, contains all terms and conditions agreed to by the City and the Applicant to undertake the activities described herein.

**RECITALS**

1. Applicant has applied for a limited property tax exemption as provided for in Chapter 84.14 of the Revised Code of Washington (RCW) and Chapter 5.88 of the Kirkland Municipal Code (KMC) for multifamily residential rental housing ("Multifamily Housing") in the Central Kirkland Residential Target Area, and the City's Director of Planning and Building ("Director") has approved the application; and
2. Applicant has submitted to the City preliminary site plans and floor plans for new Multifamily Housing to be constructed as part of a one hundred seventy-one (171)-unit project ("Project") on property situated at 434 Kirkland Way in Kirkland, Washington ("Property"), and as more particularly described in **Exhibit A** which is attached hereto, and incorporated by reference herein; and
3. Applicant is the owner of the Property; and
4. No existing rental housing building that contained four (4) or more occupied dwelling units was demolished on the Property within eighteen (18) months prior to Applicant's submission of its application for limited property tax exemption; and
5. The City has determined that the Multifamily Housing will, if completed, occupied, and owned as proposed, satisfy the requirements for a Final Certificate of Tax Exemption ("Final Certificate").
6. This Contract is entered into pursuant to City Council action taken on \_\_\_\_\_.

NOW, THEREFORE, in consideration of the mutual promises herein, City and Applicant do mutually agree as follows:

1. Definitions.

a. Words and terms capitalized in this Contract, unless explicitly defined in this Contract, shall have the meanings ascribed them by Chapter 5.88 KMC as of the date this Contract was executed or as they are hereafter amended.

b. "Eligible Household." One or more adults and their dependents, which adults certify that their household income does not exceed the applicable percent of the King County Median Income given in Section 4.a. of this Contract.

c. "King County Median Income." The median family income for the Seattle-Bellevue, WA HUD Metro FMR Area as most recently determined by the Secretary of Housing and Urban Development (HUD) under Section 8 of the United States Housing Act of 1937, as amended. In the event that HUD no longer publishes median family income figures for King County, the City may estimate the King County Median Income in such manner as the Director shall determine.

2. Conditional Certificate of Acceptance of Tax Exemption.

City agrees, upon execution of this Contract following approval by the City Council, to issue a Conditional Certificate of Acceptance of Tax Exemption ("Conditional Certificate"), which Conditional Certificate shall expire three (3) years from the date of approval of this Contract by the Council, unless extended by the Director as provided in KMC 5.88.070.

3. Agreement to construct Multifamily Housing.

a. Applicant agrees to construct the Project on the Property, including the Multifamily Housing, substantially as described in the site plans, floor plans, and elevations attached hereto in **Exhibit B**, subject to such modifications thereto as may be required to comply with applicable codes and ordinances, including the design review process. In no event shall Applicant provide fewer than four new dwelling units designed for permanent residential rental or ownership occupancy, nor shall permanent residential housing comprise less than fifty percent (50%) of the gross floor area of the Project constructed pursuant to this Contract.

b. Applicant agrees to construct the Project on the Property, including the Multifamily Housing, and to comply with all applicable zoning requirements, land use regulations, and building and housing code requirements contained in Titles 21, 22, 23, and 25 KMC or other applicable law. Applicant further agrees that approval of this Contract by the City Council, its execution by the Director, or issuance of a Conditional Certificate by the City pursuant to KMC 5.88.060 in no way constitutes approval of proposed improvements on the Property with respect to applicable provisions of Titles 21, 22, 23, and 25 KMC or other applicable law or obligates the City to approve proposed improvements.

c. Applicant agrees that the Multifamily Housing will be completed within three years from the date of approval of this Contract by the Council, unless extended by the Director for cause as provided in KMC 5.88.070.

4. Agreement to provide affordable housing.

Applicant agrees to provide seventeen (17) dwelling units ("Affordable Units") for rent, reserved for occupancy by Eligible Households and having a monthly housing expense, including rent, one parking space, utilities or an applicable utility allowance, and other expenses required by the Owner as a condition of tenancy, that is no greater than thirty percent (30%) of the monthly King County Median Income Level given in the table, adjusted for household size.

Affordability Level		Affordable Units
Income Level	Percent of King County Median Income	
Low Income	50%	17

5. Location and design of Affordable Units – Affordability Covenant – Conversion.

a. The Affordable Units shall be those units indicated in **Exhibit C**. The Applicant may propose to change the particular units dedicated for the Affordable Units, provided that a total of 17 units are designated for Affordable Units, and the same unit mix and minimum sizes of Affordable Units is maintained. The Applicant shall request in writing the City's approval of any proposed change to the units dedicated for the Affordable Units. The City will review the proposed changes and shall base its approval or disapproval of the proposed changes upon the criteria set forth in this section.

b. The exterior designs of the Affordable Units are to be compatible and comparable with the market rate units. The interior finish of the Affordable Units shall at a minimum include standard features and result in a totally finished and livable home.

c. Prior to issuing a certificate of occupancy, an agreement in a form acceptable to the city attorney ("Covenant") and substantially in the form of **Exhibit D** that addresses price restrictions, Eligible Household qualifications, long-term affordability, and any other applicable topics of the Affordable Units shall be recorded with the King County department of records and elections. This agreement shall be a covenant running with the land and shall be binding on the assigns, heirs and successors of the Applicant. Affordable Units that are provided under this section shall remain as affordable housing for the life of the Project.

d. In the event the Project is proposed for conversion to condominium, owner-occupied, or non-rental residential use, the Applicant must submit to the City for its approval a plan for preserving the Affordable Units. The City can consider options which would convert the Affordable Units to owner-occupied Affordable Units. In the event a condominium conversion

occurs during the period of the property tax exemption and owner-occupied Affordable Units are provided at the affordability levels as defined in KMC 5.88.020(a) or that have such other comparable level of affordability as provided for in the city's affordable housing multifamily tax exemption incentive program, as regulated through Chapter 112 of the Kirkland Zoning Code, per Section 6 of this Contract, the Affordable Units will continue to be eligible for the property tax exemption for the balance of the exemption period or for the period of time the conversion allows, whichever is appropriate. The balance of the Project would no longer be eligible for the exemption, and City will not cancel the Final Certificate as provided in Section 11 of this Contract.

6. Requirements for Final Certificate of Tax Exemption.

Applicant may, upon completion of the Project and upon issuance by the City of a temporary or permanent certificate of occupancy, request a Final Certificate of Tax Exemption. The request shall be in a form approved by the City and directed to the City's Planning and Building Department and at a minimum include the following:

a. A statement of expenditures made with respect to the overall Project and the residential and non-residential portions of the Project.

b. A description of the completed work, including floor area of residential and non-residential area, and a statement of qualification for the exemption.

c. Documentation that the Multifamily Housing was completed within the required three-year period or any authorized extension and in compliance with the terms of this Contract.

d. Information regarding Applicant's compliance with the affordability requirements in KMC 5.88.090 and this Contract, which shall include the following:

(1) Identification of all Affordable Units, whether rented or held vacant to be rented by Eligible Households, the size of the Affordable Units, and the maximum rents and household incomes for each affordable unit at time of initial leasing;

(2) Rents (or offering rents, as applicable) for all Affordable Units;

(3) A copy of the application and income verification form used for rental of Affordable Units; and

(4) A copy of the form of lease or rental agreement to be used for Affordable Units; and

e. Any such further information that the Director deems necessary or useful to evaluate eligibility for the Final Certificate.

7. Agreement to Issue Final Certificate.

The City agrees to issue a Final Certificate granting a limited property tax exemption for a period of eight years, and to file said Final Certificate with the King County Assessor within forty (40) days of submission of all materials required by Paragraph 6, if Applicant has:

- a. Successfully completed the Multifamily Housing in accordance with the terms of this Contract and Chapter 5.88 KMC;
- b. Filed a request for a Final Certificate with the Director and submitted the materials described in Paragraph 6 above;
- c. Paid to the City a fee in the amount necessary to cover the Assessor's administrative costs; and
- d. Met all other requirements provided in Chapter 5.88 KMC for issuance of the Final Certificate.

8. Annual certification.

Within thirty (30) days after the first anniversary of the date the City filed the Final Certificate of Tax Exemption and each year thereafter for the term of the Covenant, Applicant agrees to file a certification or declaration with the Director, verified upon oath or affirmation, with respect to the accuracy of the information provided therein, containing at a minimum the following:

- a. A statement of the occupancy and vacancy of the Multifamily Housing units during the previous year; and
- b. A statement that the Multifamily Housing has not changed use since the date of filing of the Final Certificate; and
- c. A statement that the Multifamily Housing continues to be in compliance with this Contract and the requirements of Chapter 5.88 KMC; and
- d. A description of any improvements or changes to the Project made after the filing of the Final Certificate or the previous certification; and
- e. A statement of the change in ownership of all or any part of the property since the Final Certificate was filed; and



f. Information and documentation sufficient to demonstrate, to the satisfaction of the Director, compliance with the affordability requirements of KMC 5.88.090 and this Contract, which shall, at minimum, include the following:

(1) Identification of each Affordable Unit, and any substitution of Affordable Units during the previous year and for each Affordable Unit, the current Household Income limits and maximum allowed rent.

(2) For each Affordable Unit that was initially occupied or that had a change of tenancy during the previous year, the date of each tenant's initial occupancy, the household size and Household Income of each tenant household at initial occupancy, and the rent charged at initial occupancy.

(3) For each Affordable Unit that was occupied by the current tenant prior to the previous year, the date of each tenant's initial occupancy, the tenant's current Household Income, the tenant's Household Income at initial occupancy, and current contract rent.

9. No violations for duration of exemption.

For the duration of the exemption granted under Chapter 5.88 KMC, Applicant agrees that the Project and that portion of the Property on which the Project is constructed will have no violations of applicable zoning requirements, land use regulations, and building and housing code requirements contained in KMC Titles 21, 22, 23, and 25 or other applicable law for which the Planning and Building Department or its functional successor shall have issued a notice of violation, citation or other notification that is not resolved by a certificate of compliance, certificate of release, withdrawal, or another method that proves either compliance or that no violation existed, within the time period for compliance, if any, provided in such notice of violation, citation or other notification or any extension of the time period for compliance granted by the Director.

10. Notification of transfer of interest or change in use.

Applicant agrees to notify the Director within thirty (30) days of any transfer of Applicant's ownership interest in the Project or that portion of the Property on which the Project is constructed. Applicant further agrees to notify the Director and the King County Assessor within sixty (60) days of any change of use of any or all of the Multifamily Housing on the Property to another use. Applicant acknowledges that such a change in use may result in cancellation of the tax exemption and imposition of additional taxes, interest and penalties pursuant to State law.

11. Cancellation of exemption - Appeal.

a. The City reserves the right to cancel the Final Certificate if at any time the Multifamily Housing, the Project or that portion of the Property on which the Project is constructed

no longer complies with the terms of this Contract or with the requirements of Chapter 5.88 KMC, or for any other reason no longer qualifies for an exemption.

b. If the exemption is canceled for non-compliance, Applicant acknowledges that state law requires that an additional real property tax is to be imposed in the amount of: (1) the difference between the tax paid and the tax that would have been paid if it had included the value of the non-qualifying improvements, dated back to the date that the improvements became non-qualifying; (2) a penalty of 20% of the difference calculated under paragraph (a) of this paragraph; and (3) interest at the statutory rate on delinquent property taxes and penalties, calculated from the date the tax would have been due without penalty if the improvements had been assessed without regard to the exemptions provided by Chapter 84.14 RCW and 5.88 KCW. Applicant acknowledges that, pursuant to RCW 84.14.110, any additional tax owed, together with interest and penalty, become a lien on that portion of the Property on which the Project is constructed and attach at the time the portion of the Property is removed from multifamily use or the amenities no longer meet applicable requirements, and that the lien has priority to and must be fully paid and satisfied before a recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the Property may become charged or liable. Applicant further acknowledges that RCW 84.14.110 provides that any such lien may be foreclosed in the manner provided by law for foreclosure of liens for delinquent real property taxes.

c. Upon determining that a tax exemption is to be canceled, the Director, on behalf of the City Council, shall notify the property owner by certified mail, return receipt requested. The property owner may appeal the determination in accordance with KMC 5.88.100(h).

12. Amendments.

No modification of this Contract shall be made unless mutually agreed upon by the parties in writing and unless in compliance with the provisions of KMC 5.88.065.

13. Binding effect.

The provisions, covenants, and conditions contained in this Contract are binding upon the parties hereto and their legal heirs, representatives, successors, assigns, and subsidiaries.

14. Audits and inspection of records.

Applicant understands and agrees that the City has the right to audit or review appropriate records to assure compliance with this Contract and Chapter 5.88 KMC and to perform evaluations of the effectiveness of the Multifamily Limited Property Tax Exemption program. Applicant agrees to make appropriate records available for review or audit upon seven days' written notice by the City.

15. Notices.

All notices to be given pursuant to this Contract shall be in writing and shall be deemed given when hand-delivered within normal business hours, when actually received by facsimile transmission, or two business days after having been mailed, postage prepaid, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

APPLICANT: MRM Kirkland LLC  
PO Box 1743  
Bellevue, WA 98009  
Attn: Jeff Williamson

CITY: City of Kirkland  
Planning and Building Department  
City of Kirkland  
123 Fifth Avenue  
Kirkland, WA 98033  
Attn: Director

With a copy to:

A Regional Coalition for Housing (ARCH)  
16255 NE 87<sup>th</sup> Street, Suite A-3  
Redmond, WA 98052

16. Severability.

In the event that any term or clause of this Contract conflicts with applicable law, such conflict shall not affect other terms of this Contract that can be given effect without the conflicting terms or clause, and to this end, the terms of the Contract are declared to be severable. However, if the severable term prevents the City from receiving the benefits of having affordable housing as set forth in Chapter 84.14 RCW and Chapter 5.88 KMC, then this Contract shall be deemed terminated, or may be terminated, as soon as possible in compliance with any applicable law.

17. Exhibits.

The following exhibits are attached to this Contract and incorporated herein by this reference:

<b>Exhibit A</b>	<b>Legal Description</b>
<b>Exhibit B</b>	<b>Project Site Plan</b>

**Exhibit C      Designation of Affordable Units**  
**Exhibit D      Form of Declaration of Affordable Housing Covenants**

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the dates indicated below.

THE CITY OF KIRKLAND

APPLICANT

MRM KIRKLAND LLC

---

Tracey Dunlap  
Its: Deputy City Manager

---

Joe Razore  
Its: Manager

Approved as to Form

---

City Attorney

STATE OF WASHINGTON                    }  
  }  
COUNTY OF KING                       }

ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of the CITY OF KIRKLAND, who executed the foregoing document on behalf of said City, and acknowledged the said document to be the free and voluntary act and deed of said City, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said document.

IN WITNESS WHEREOF I have given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Washington.

Print Name \_\_\_\_\_

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

STATE OF WASHINGTON                    }  
   }  
 COUNTY OF KING                        }       ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Joe Razore, to me known to be the Manager of MRM Kirkland LLC, a limited liability company, who executed the foregoing instrument on behalf of the said company, and acknowledged the said document to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said document.

IN WITNESS WHEREOF I have given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 Notary Public in and for the State of Washington.

Print Name \_\_\_\_\_

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

**EXHIBIT A****LEGAL DESCRIPTION**

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 25 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SUBDIVISION;  
THENCE SOUTH 89°39'00" WEST 708.00 FEET ALONG THE SOUTHERLY LIMIT OF SAID  
SUBDIVISION;  
THENCE NORTH 00°21'00" WEST 168.71 FEET TO A POINT ON THE NORTHERLY MARGIN OF  
THE KIRKLAND-REDMOND SHORT-LINE ROAD AND THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING NORTH 00°21'00" WEST 149.00 FEET;  
THENCE SOUTH 89°46'25" WEST 330.00 FEET;  
THENCE SOUTH 00°21'00" EAST 274.96 FEET TO AN INTERSECTION WITH THE NORTHERLY  
MARGIN OF THE KIRKLAND-REDMOND SHORT-LINE ROAD;  
THENCE NORTHEASTERLY ALONG SAID ROAD MARGIN ON A CURVE TO THE LEFT, THE  
CENTER OF WHICH BEARS NORTH 10°08'15" WEST HAVING A RADIUS OF 925.37 FEET FOR  
AN ARC DISTANCE OF 355.15 FEET TO THE TRUE POINT OF BEGINNING;

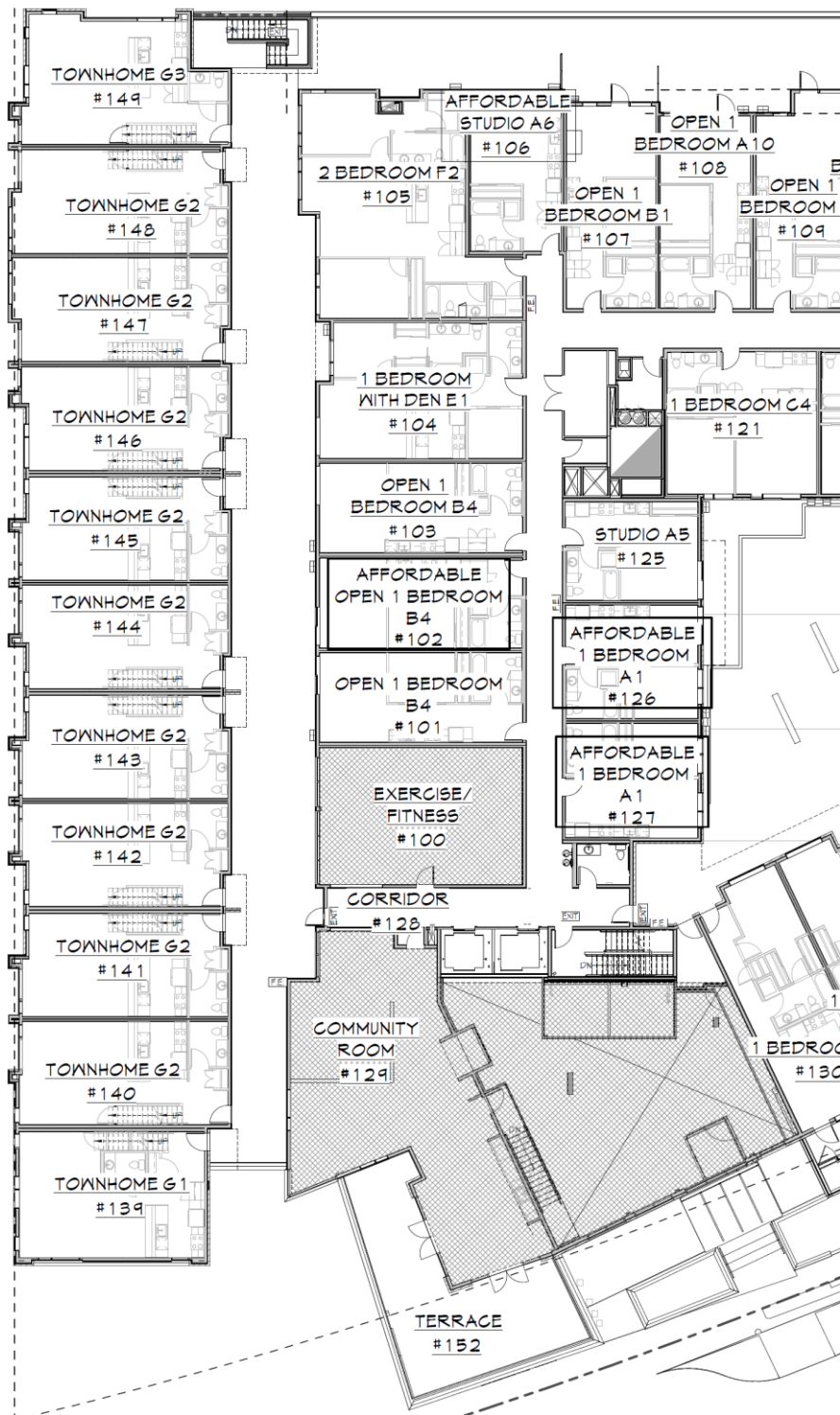
EXCEPT THAT PORTION OF THE SAID SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 25  
NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUTY, WASHINGTON, DESCRIBED  
AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SUBDIVISION;  
THENCE SOUTH 89°39'00" WEST 708.00 FEET ALONG THE SOUTHERLY LIMIT OF SAID  
SUBDIVISION;  
THENCE NORTH 00°21'00" WEST, 168.71 FEET TO A POINT ON THE NORTHERLY MARGIN OF  
THE KIRKLAND-REDMOND SHORT-LINE ROAD;  
THENCE CONTINUING NORTH 00°21'00" WEST, 149.00 FEET;  
THENCE SOUTH 89°46'25" WEST, 2.87 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE SOUTH 89°34'30" WEST 166.54 FEET;  
THENCE NORTH 00°25'30" WEST 0.58 FEET;  
THENCE NORTH 89°46'25" EAST, 166.54 FEET TO THE TRUE POINT OF BEGINNING;

TOGETHER WITH EASEMENT RIGHTS OF INGRESS AND EGRESS TO AND FROM CENTRAL WAY  
AND ALL OTHER RIGHTS RELATING TO THE ABOVE-DESCRIBED PROPERTY TO THE EXTENT  
SET FORTH IN INSTRUMENT RECORDED UNDER RECORDING NUMBER 8506270132.

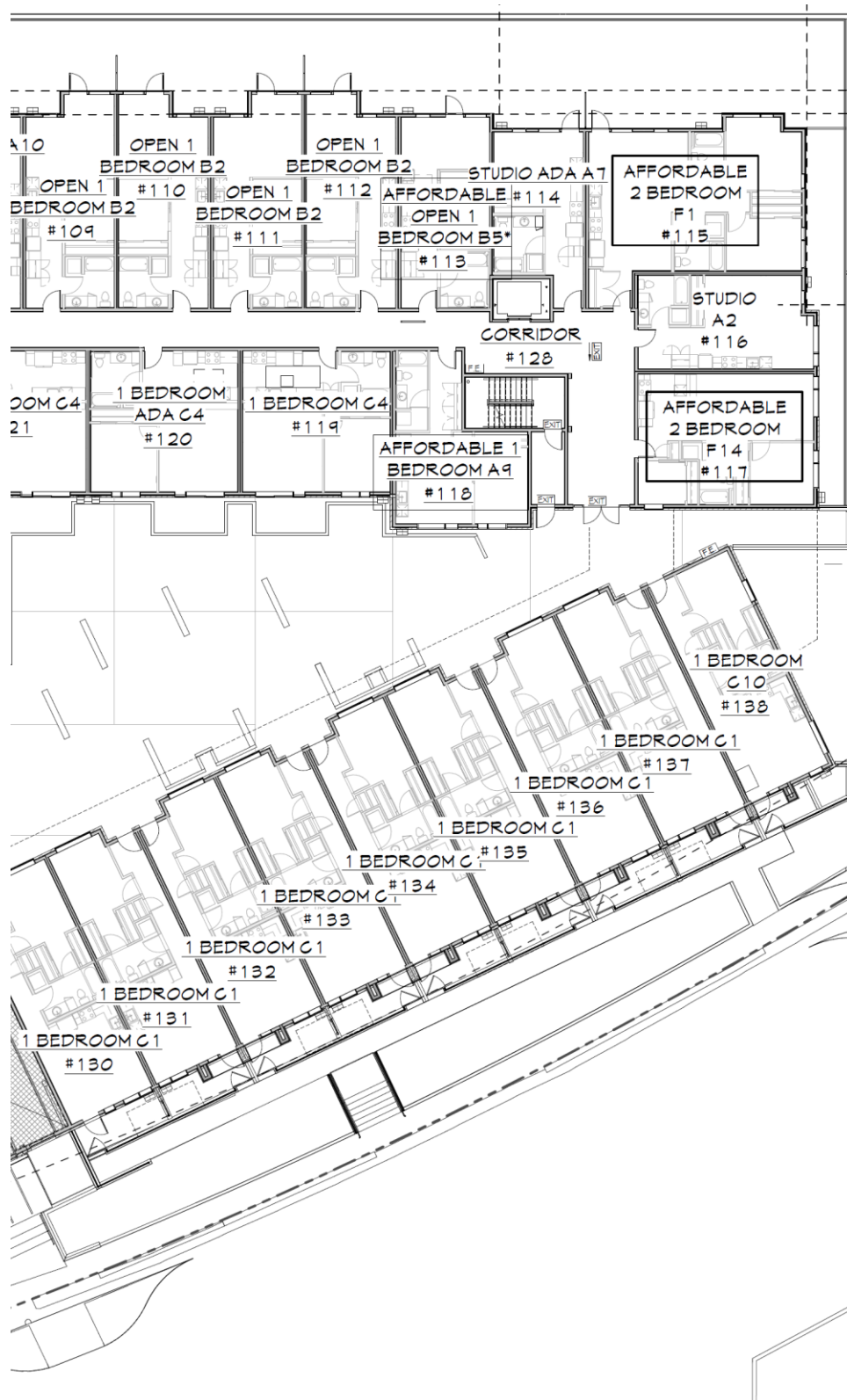
## EXHIBIT B

### PROJECT SITE PLAN

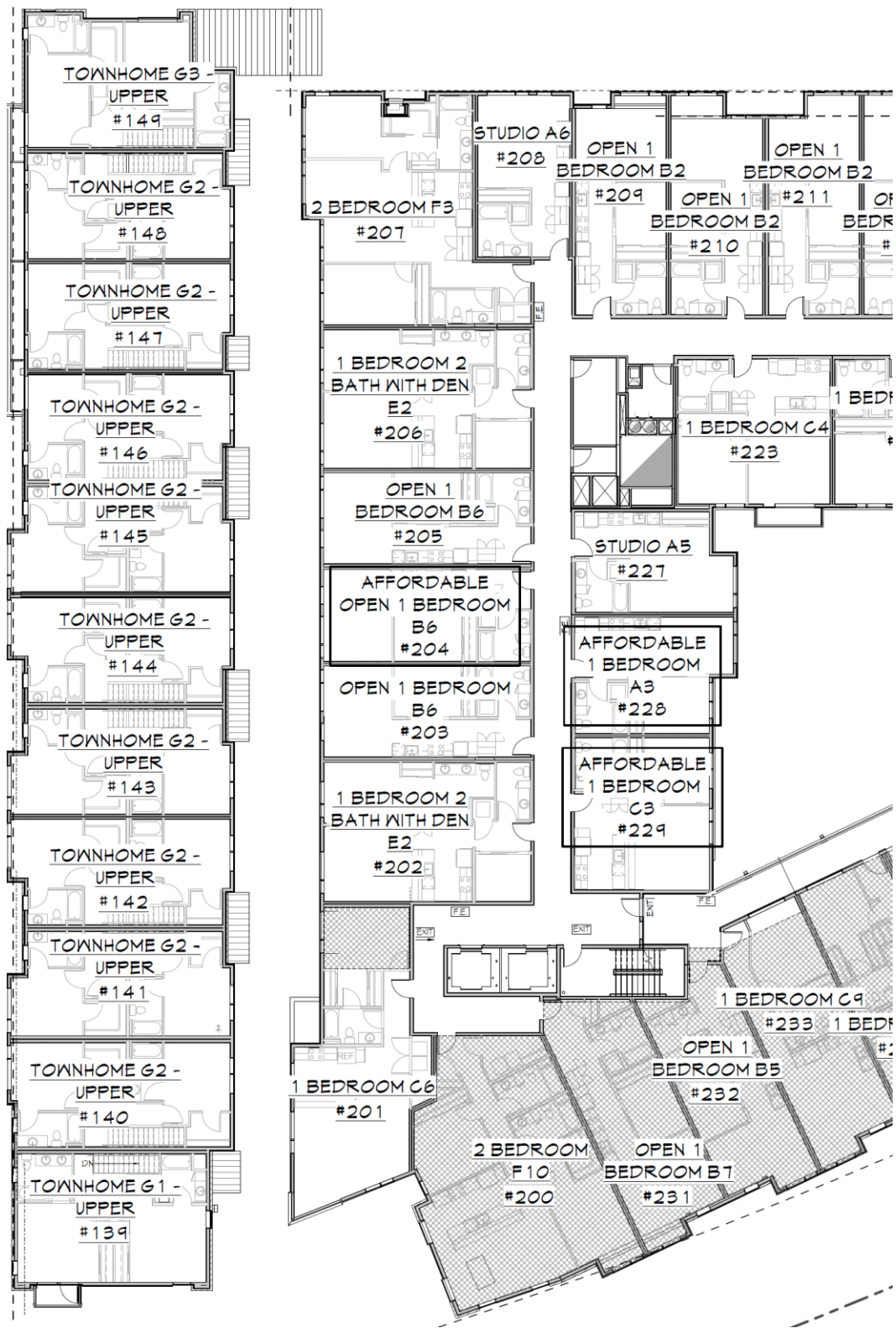


1st Floor, West

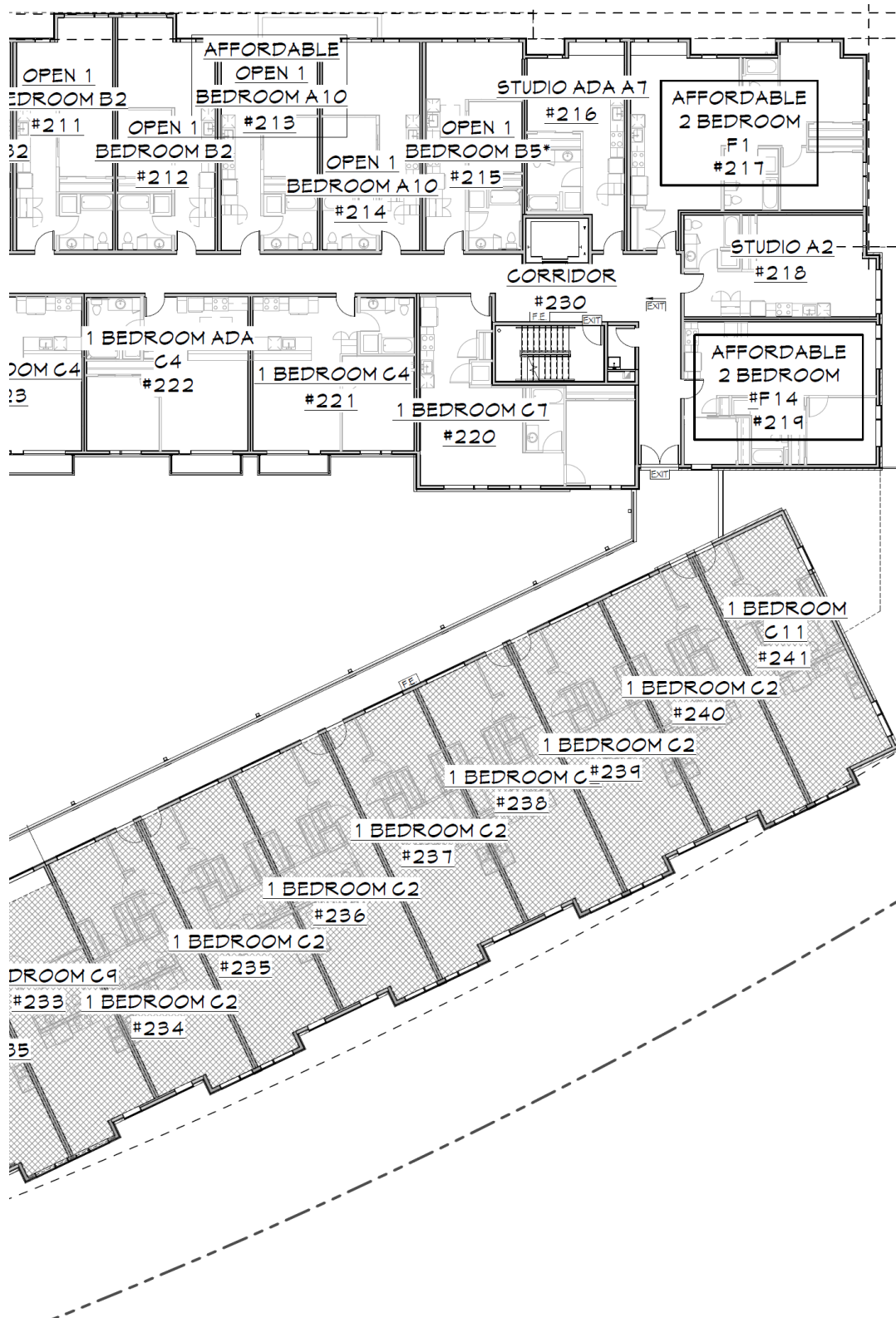




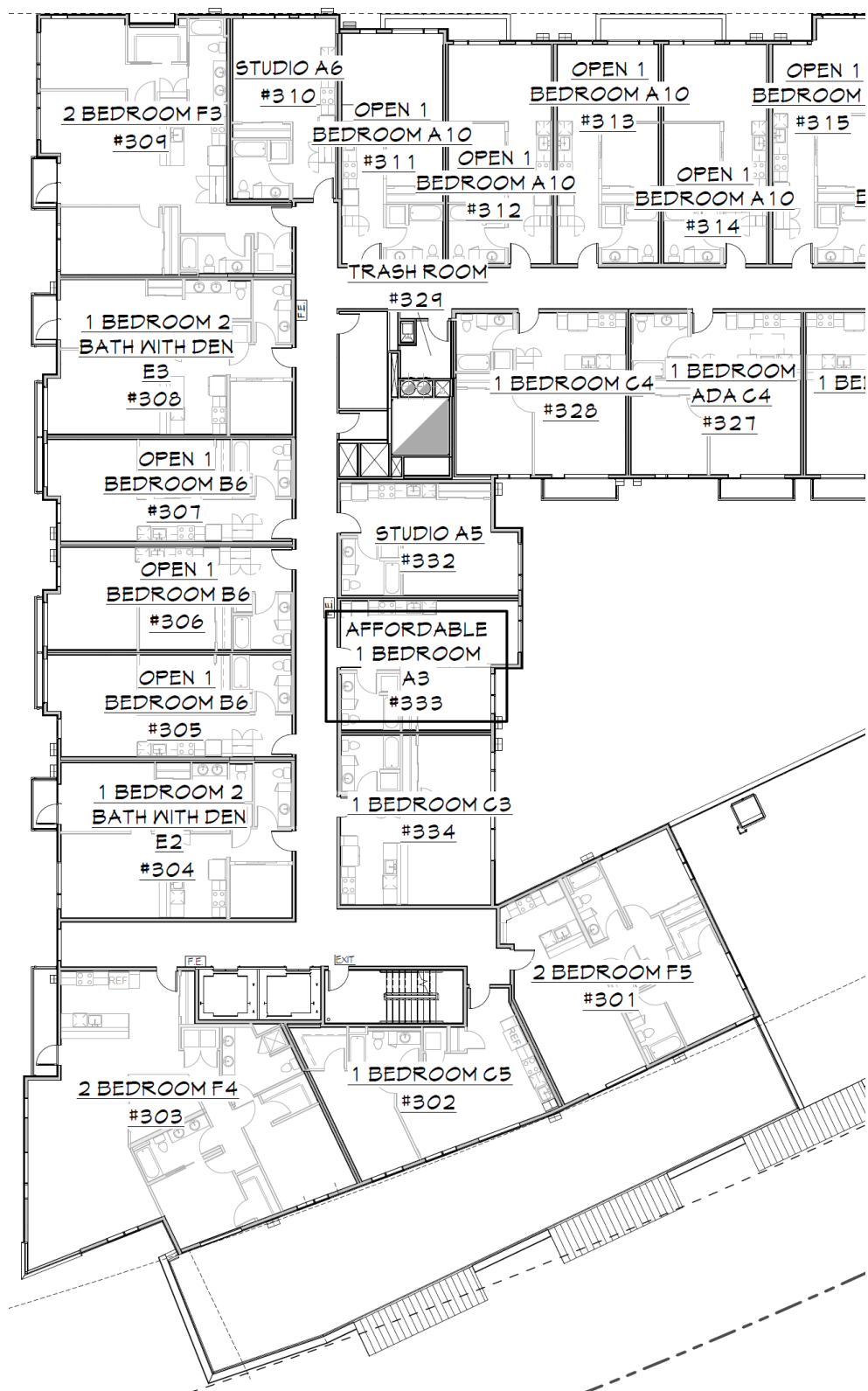
1st Floor, East



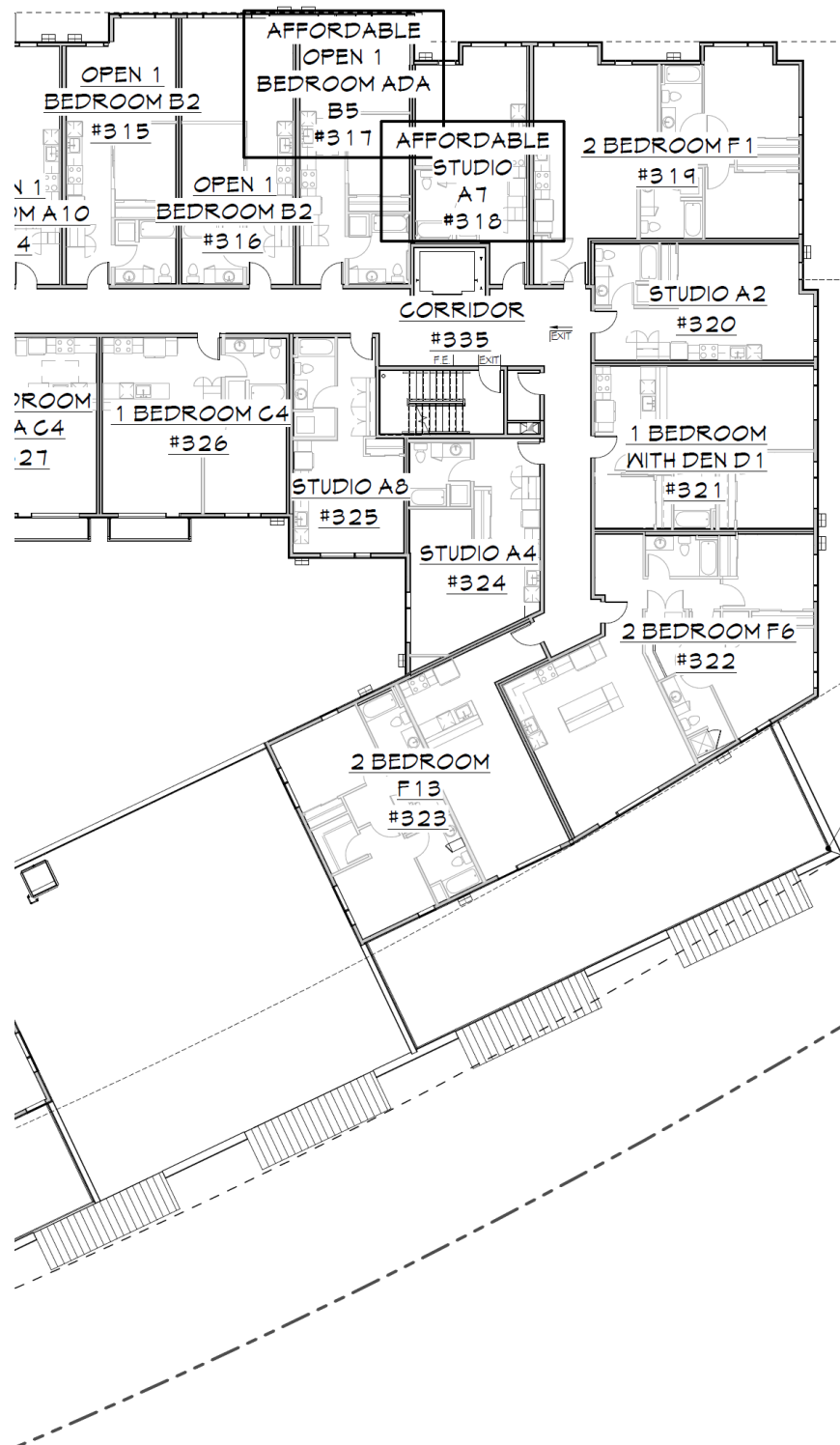
2nd Floor, West



2nd Floor, East



3rd Floor, West



3rd floor, East

**EXHIBIT C****DESIGNATION OF AFFORDABLE UNITS**

<b>Unit Number</b>	<b>Unit Type</b>	<b>Approx. Unit Size (sq ft)</b>
102	Open 1-bedroom	562
106	Studio	444
113	Open 1-bedroom	523
115	2-bedroom	1,002
117	2-bedroom	721
118	1-bedroom	549
126	1-bedroom	462
127	1-bedroom	465
204	Open 1-bedroom	567
213	Open 1-bedroom	531
217	2-bedroom	1,024
219	2-bedroom	726
228	1-bedroom	505
229	1-bedroom	601
317	Open 1-bedroom	580
318	Studio	455
333	1-bedroom	500

**EXHIBIT D****FORM OF DECLARATION OF AFFORDABLE HOUSING COVENANTS****434 KIRKLAND BOARDWALK**

SECTION 1 —	DEFINITIONS AND INTERPRETATION
SECTION 2 —	RESIDENTIAL RENTAL PROPERTY
SECTION 3 —	AFFORDABLE UNITS FOR ELIGIBLE HOUSEHOLDS
SECTION 4 —	REPORTING REQUIREMENTS
SECTION 5 —	SECTION 8 CERTIFICATE HOLDERS
SECTION 6 —	LEASE PROVISIONS
SECTION 7 —	SALE OR TRANSFER OF THE PROJECT
SECTION 8 —	TERM
SECTION 9 —	NO DISCRIMINATION
SECTION 10 —	COVENANTS RUN WITH LAND
SECTION 11 —	ENFORCEMENT
SECTION 12 —	SUBORDINATION, TERMINATION, RIGHTS RESERVED BY HUD
SECTION 13 —	ESTOPPEL CERTIFICATE
SECTION 14 —	AGREEMENT TO RECORD
SECTION 15 —	RELIANCE
SECTION 16 —	GOVERNING LAW
SECTION 17 —	NO CONFLICT WITH OTHER DOCUMENTS
SECTION 18 —	AMENDMENTS
SECTION 19 —	NOTICES
SECTION 20 —	MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT
SECTION 21 —	SEVERABILITY
SECTION 21 —	CONSTRUCTION
SECTION 22 —	TITLES AND HEADINGS

**EXHIBITS**

"A"	LEGAL DESCRIPTION OF PROPERTY
"B"	DESIGNATION OF AFFORDABLE UNITS
"C"	CERTIFICATE OF HOUSEHOLD ELIGIBILITY
"D"	ANNUAL PROJECT CERTIFICATION



**DECLARATION OF AFFORDABLE HOUSING COVENANTS  
434 KIRKLAND BOARDWALK**

THIS DECLARATION OF AFFORDABLE HOUSING COVENANTS (the "Covenant") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF KIRKLAND, a Municipal Corporation of the State of Washington (the "City"); and MRM KIRKLAND LLC, a Washington limited liability company (the "Owner").

WITNESSETH:

This Covenant is predicated upon the following facts:

1) The Owner is the owner of property located at 434 Kirkland Way in Kirkland, Washington. Owner intends to develop said property by constructing and renting one hundred seventy-one (171) dwelling units (the "Project") subject to City approval and such other approvals by State and local agencies, as required.

2) The Owner's proposed Project shall include seventeen (17) affordable rental units for Low-Income Households ("Eligible Households," as the term is defined below). Such affordable rental units shall be of such bedroom quantity and quality as are in proportion to the overall proportion of bedroom quantity and quality of all of the rental units in the Project.

3) The City finds that the Project will benefit the City by providing affordable rental housing for Eligible Households.

4) The Owner has indicated its willingness to accept certain conditions affecting the use of the Property. It is the purpose of this Covenant to set forth the conditions under which the City has approved the Project and to impose enforceable restrictions on the use and occupancy of the rental portion of the Project.

5) This Covenant is entered into pursuant to Chapter 112 of the Kirkland Zoning Code, which implements the Affordable Housing policies of the City.

6) Owner has applied for a limited property tax exemption for eight (8) years as provided for in Chapter 84.14 RCW and Chapter 5.88 KMC for multi-family residential rental housing ("Multifamily Housing") in the Central Kirkland Residential Targeted Area, and the Director of Planning and Building ("Director") has approved the application.

NOW, THEREFORE, for and in consideration of the mutual promises aforesaid and made and relied upon by the parties hereto, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the City agree as follows:



## SECTION 1 — DEFINITIONS AND INTERPRETATION

Capitalized terms used herein shall have the following meanings unless the context in which they are used clearly requires otherwise.

"Affordable Rent" means a monthly housing expense, including Utilities or an applicable Utility Allowance for tenant-paid utilities, parking for a minimum of one car, and any expenses required by the Owner as a condition of tenancy (including but not limited to renter's insurance, pest control, and sewer system capacity charges), that is no greater than thirty percent (30%) of the monthly King County Median Income level(s) for Eligible Households, as shown in the following table, as adjusted for Household Size. If a tenant pays for Utilities separately from rent, the Affordable Rent shall be reduced by the amount of the applicable Utility Allowance.

**Affordable Rent Levels**

	<b>Percent of King County Median Income</b>
Low Income	50%

"Affordable Units" means the 17 units in the Project as selected by the Owner and as approved by the City or its Designee, as set forth in Exhibit B, and reserved for occupancy by Eligible Households pursuant to Section 3.

"City" means the City of Kirkland.

"Completion Date" means the date of the completion of the acquisition, construction, purchase, reconstruction and equipping, as the case may be, of the Project, as that date shall be certified as provided in Section 4.

"Covenant" means this Declaration of Affordable Housing Covenants between the City and the Owner.

"Designee" means A Regional Coalition for Housing ("ARCH") or such other agency as may be designated by the City in writing to the Owner. The City shall notify the Owner of any determination not to utilize ARCH as its Designee for purposes of this designation.

"Eligible Household" means one or more adults and their dependents, which adults certify that they meet the qualifications for eligibility set forth below in this definition, in Section 3.F. of this Covenant, and as set forth in the Certificate of Household Eligibility attached hereto as Exhibit C and incorporated by reference herein, and who certify that their Household Income does not exceed the applicable percent of the King County Median Income, as set forth in this definition and Section 3.F. of this Covenant, adjusted for Household Size.

**Maximum Household Income at Initial Occupancy**

<b>Income Level</b>	<b>Percent of King County Median Income</b>
Low Income	50%

"Household Income" means all income from all household members over the age of 18 residing in the household. Income consists of those items listed in **Exhibit C**, Certificate of Household Eligibility (e.g. wages, interest income, etc.). Income of dependents who reside within a household for less than four (4) months of the year will not be counted toward Household Income.

"Household Size" means the average household size assumed for purposes of calculating Affordable Rents as follows:

<u>UNIT TYPE</u>	<u>AVERAGE HOUSEHOLD SIZE</u>
Studio	1 Person
1 Bedroom	1.5 Persons
2 Bedroom	3 Persons
3 Bedroom	4.5 Persons

"King County Median Income" means the median family income for the Seattle-Bellevue, WA HUD Metro FMR Area as most recently determined by the Secretary of Housing and Urban Development ("HUD") under Section 8(f)(3) of the United States Housing Act of 1937, as amended. In the event that HUD no longer publishes median family income figures for King County, the Director may estimate the King County Median Income in such manner as the Director shall determine.

"Lender" means HUD/FHA, Veterans Administration ("VA"), Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), or another party acquiring such loan upon foreclosure of a deed of trust or mortgage ("Deed of Trust") insured, made or held by HUD/FHA, VA, FNMA, FHLMC; or an institutional third-party lender or investor.

"Owner" means MRM Kirkland LLC, and its successors and assigns, and any surviving, resulting or transferee entity.

"Owner Representative" means the person or persons (who may be employees of the Owner) designated from time to time to act hereunder on behalf of the Owner in a written certification furnished to the City or its Designee, containing a specimen signature of such person or persons and signed by the Owner or on behalf of the Owner by a duly authorized representative of the Owner.

"Project" means the building, structures and other improvements to be constructed on the Property, and all equipment, fixtures and other property owned by the Owner and located on, or used in connection with, such buildings, structures and other improvements and all functionally related and subordinate facilities.

"Property" means the real property which will be devoted to the Project as more particularly described in Exhibit A which is attached hereto, and incorporated by reference herein, and all rights and appurtenances thereunto appertaining.

"Property Tax Exemption Agreement" means that agreement titled Multifamily Housing Limited Property Tax Exemption Contract between the City and Owner dated \_\_\_\_\_.

"Qualified Project Period" means for the life of the Project.

"Utilities" means basic residential utility services, including heat, gas, electricity, water, sewer, and solid waste and recycling services, but excluding sewer system capacity charges and telephone, internet, and television services.

"Utility Allowance" means a deduction to Affordable Rent, established by the City or its Designee, for tenant-paid Utilities.

## SECTION 2 — RESIDENTIAL RENTAL PROPERTY

A. General Description. The Owner will acquire and construct the Project for purposes of providing multifamily housing, and neighborhood retail uses, and the Owner shall own, manage, and operate (or cause the management and operation of) the Project to provide multifamily housing comprising a building or structure or several inter-related buildings or structures, each consisting of more than one dwelling unit and neighborhood retail uses and facilities functionally related and subordinate thereto, and no other facilities. As used herein facilities functionally related and subordinate to the Project shall include facilities for use by the tenants, including, for example, recreational facilities, parking areas, and other facilities which are reasonably required for the Project, for example, heating and cooling equipment, trash disposal equipment, or units of resident managers or maintenance personnel. The multi-family rental housing shall be scheduled to be completed within three (3) years from the date of City approval of the application for multi-family housing property tax exemption, or within a longer period if authorized by the City.

B. Similar Quality Construction. The interior finish and quality of construction of the Affordable Units shall at a minimum be comparable to entry level rental housing in the city of Kirkland, and each dwelling unit in the Project shall contain facilities for living, sleeping, eating, cooking and sanitation for a single person or a household which are complete, separate and

distinct from other dwelling units in the Project and will include a sleeping area, separate bathing facility, and a cooking range, refrigerator and sink.

C. Conversion to Condominium. In the event the Project is proposed for conversion to condominium, owner-occupied, or non-rental residential use, the Owner must submit to the City for its review a plan for preserving the Affordable Units. The City can consider options which would convert the Affordable Units to owner occupancy by Eligible Households. The Owner must receive authorization from the City prior to conversion to condominium, owner-occupied, or non-rental residential use. This section does not waive the Owner's obligations to comply with any other law or regulations pertaining to conversion to ownership use.

### SECTION 3 — AFFORDABLE UNITS FOR ELIGIBLE HOUSEHOLDS

A. Number of Affordable Units. The Owner shall lease or rent, or make available for lease or rental, to the general public, all of the Affordable Units in the Project. The Owner shall designate all of the Affordable Units, reserved for occupancy by Eligible Households, as follows:

#### Dwelling Units

Unit Type (Bedrooms)	Affordable Units	Total Units
	Low-Income	
Studio	2	24
Open 1- bedroom	5	52
1-bedroom	6	59
2-bedroom	4	36
Total	17	171

B. Designation/Re-designation of Affordable Units. The Owner agrees to rent the dwelling unit(s) designated in **Exhibit B** as Affordable Unit(s). Units so designated shall have substantially the same equipment and amenities as other dwelling units in the Project with the comparable number of rooms. The Affordable Unit(s) shall be intermingled with all other dwelling units and shall have a unit mix comparable to the overall mix of units in the Project. The City or its Designee shall approve or deny the proposed Affordable Units based upon the criteria set forth in this section.

The Owner, from time to time, may propose to change the particular units designated as Affordable Units, provided that at all times at least 17 of all of the residential units in the Project are designated as Affordable Units, and provided that at all times the same unit mix is retained. The Owner shall notify the City or its Designee of the proposed change in writing for the City's or

its Designee's approval. The City or its Designee will review the proposed changes and shall approve or deny the proposed changes based upon the criteria set forth in this Section.

C. Affordable Units Rent Level. The monthly rent for the Affordable Units occupied by Eligible Households shall not exceed the applicable Affordable Rents, and for each specific tenant, shall be adjusted no more than once every twelve (12) months, and in no event within the first twelve months of occupancy.

D. Renting Affordable Units to Eligible Households. During the Qualified Project Period, the Owner shall rent or lease the Affordable Units to Eligible Households and, if at any time the Owner is unable to rent or lease the Affordable Units, the Affordable Units shall remain vacant pending rental or lease to Eligible Households.

E. Equal Access to Common Facilities. Tenants in the Affordable Units shall have equal access to enjoyment of all common facilities of the Project.

F. Qualifying Eligible Household Income for Affordable Units at Initial Occupancy and Recertification. Qualifying Eligible Household Income at time of occupancy may not exceed the applicable percent of King County Median Income set forth in the table below, adjusted for Household Size. At time of annual recertification, a household will remain eligible for an Affordable Unit as long as Household Income does not exceed the Maximum Recertification Income set forth in the table below, adjusted for Household Size. If at the time of recertification Household Income exceeds the Maximum Recertification Income limit for the income level initially qualified for by a household, then within 90 days either such household must pay market rent and the next available comparable market rate unit must be rented as an Affordable Unit; or the household must vacate the unit, unless otherwise prohibited by law, to make it available for an Eligible Household.

#### Maximum Permitted Income Levels

<u>Income Level(s)</u>	<b>Maximum Income at Initial Occupancy</b>	<b>Maximum Recertification Income</b>
Low Income	50%	70%

G. Household Size Limits for Affordable Units. The Owner shall utilize the following occupancy standards for Affordable Units:

<u>Unit Size</u>	<u>Household Size</u>
Studio	1–2 Persons
1 Bedroom	1–2 Persons
2 Bedroom	2–4 Persons

3 Bedroom

3–6 Persons

## SECTION 4 — REPORTING REQUIREMENTS

A. Notice of Occupancy Permit. Within thirty (30) days of issuance of any final inspection or, if applicable, occupancy permits, the Owner shall notify the City's Planning and Building Department [Attn: Housing Planner] or its Designee, of receipt of the first certificate of occupancy for the Project.

B. City Mailing List. The City or its Designee maintains a mailing list of households interested in occupying Affordable Units. From time to time the City or its Designee will provide to the Owner the names of persons from the mailing list. In determining which eligible applicants shall be rented Affordable Units, the Owner shall, subject to Section 4.C. below, reasonably consider persons on the mailing list, and when they were placed on the mailing list.

C. Completion of Certificate of Household Eligibility. Prior to allowing any household to occupy any Affordable Unit, the Owner shall require the prospective tenant to complete a Certificate of Household Eligibility that shall be substantially in the form set forth in **Exhibit C**. The Owner shall also undertake a good faith effort to verify the applicant's Household Income, as reported on the completed Certificate. The Owner's obligation to verify the reported Household Income shall be limited to requesting copies of and reviewing the applicant's federal income tax returns, unless the Owner has actual knowledge, or reason to believe, that the information provided by the applicant is materially inaccurate. In the event federal income tax returns are not available, the Owner shall verify Household Income using wage or salary statements, or other income records that the City or its Designee may consider appropriate.

D. Annual Recertification of Residents. On an annual basis, the Owner shall require all households occupying Affordable Units to complete and return to the Owner an updated Certificate of Household Eligibility. The Owner shall undertake a good faith effort to verify the reported Household Income, as reported in the completed Certificate. The Owner's obligation to verify the Household Income shall be limited to obtaining a copy of and reviewing the tenant's federal income tax returns, unless the Owner has actual knowledge or reason to believe that the information provided by the household is materially inaccurate. In the event federal income tax returns are not available, the Owner shall verify Household Income using wage or salary statements, or other income records the City or its Designee may consider appropriate.

The Owner shall file certifications with the City or its Designee, by attachment to the Annual Project Certification required pursuant to Subsection E of this Section. The City or its Designee may investigate independently to verify certifications submitted by the Owner.

E. Annual Project Certification. After the Completion Date and until 90% of the rental units are occupied, the Owner shall, on a quarterly basis, file with the City or its Designee an Annual Project Certification, in substantially the form of **Exhibit D**. Thereafter, the Owner shall file such certification annually on or before March 31<sup>st</sup>, which must set forth the required information for the preceding year.

F. Maintain Complete Records. The Owner shall maintain complete and accurate records pertaining to the Affordable Units and shall permit any duly authorized representative of the City, including, without limitation, its Designee, to inspect the books and records of the Owner pertaining to the Affordable Units, and if applicable, incomes of Eligible Households residing in the Project. The Owner's failure to maintain such records or failure to allow examination by the City or any duly authorized representative shall constitute a default hereunder.

G. Form of Certification. Notwithstanding anything in this Section to the contrary, the Owner shall submit all documentation required by this Section on the forms designated herein, which may be modified by the City or its Designee from time to time. Changes to forms by the City or its Designee shall not significantly enlarge the Owner's obligations hereunder.

H. Monitoring Fee. The City reserves the right to establish fees to cover the costs of monitoring the Affordable Units for compliance with the income and affordability restrictions of this Covenant. At least 90 days before the effective date of such fees the City shall provide the Owner notice of the proposed fee amount along with evidence supporting it and the date, time, and place at which the City will take public comment on the fee.

## SECTION 5 — SECTION 8 CERTIFICATE HOLDERS

The Owner shall accept as tenants for Affordable Units, on the same basis as all other prospective households, households who are recipients of Federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, as amended. The Owner shall not apply, or permit the application of, management policies or lease provisions with respect to the Affordable Units which have the effect of precluding occupancy of such Units by holders of Section 8 certificates.

## SECTION 6 — LEASE PROVISIONS

A. It is the Owner's responsibility to screen and select tenants for desirability and credit worthiness. Except as restricted in this Covenant, such selection is within the Owner's discretion. If written management policies exist, or exist in the future, with respect to the Project, the City or its Designee may review such written policies and may require changes in such policies, if necessary, so that they comply with the requirements of this Covenant.

B. All leases for Affordable Units shall contain clauses wherein each individual lessee: (i) certifies the accuracy of the statements made in the Certificate of Household Eligibility, (ii) agrees that the household income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, and (iii) agrees that misrepresentation in the certification is a material breach of the lease, entitling the Owner to terminate the lease for the Affordable Unit.

#### SECTION 7 — SALE OR TRANSFER OF THE PROJECT

The Owner hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project or any portion thereof without first providing a written notice from the purchaser stating that the purchaser understands, and will comply with the Owner's duties and obligations under this Covenant. Such notice must be received by the City or its Designee at least 10 days prior to the close of escrow.

#### SECTION 8 — TERM

This Covenant shall become effective upon its execution and delivery and shall continue in full force and effect throughout the Qualified Project Period, unless sooner modified or terminated in accordance with Section 12 hereof.

#### SECTION 9 — NO DISCRIMINATION

The Owner shall not discriminate on the basis of race, creed, religion, color, sex, sexual orientation, age, national origin, marital status, or presence of any mental or physical handicap as set forth in RCW 49.60.030, as now existing and as may be amended, in the lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

#### SECTION 10 — COVENANTS RUN WITH LAND

The City and Owner hereby declare their understanding and intent that the covenants, conditions and restrictions set forth herein directly benefit the land (i) by enhancing and increasing the enjoyment and use of the Project by certain Eligible Households, and (ii) by furthering the public purposes of providing housing for Eligible Households.

The City and the Owner hereby declare that the covenants and conditions contained herein shall bind and the benefits shall inure to, respectively, the Owner and their successors and assigns and all subsequent owners of the Project or any interest therein, and the City and its successors and assigns, all for the Qualified Project Period. Except as provided in Section 12 of this Covenant, each and every contract, deed or other instrument hereafter executed conveying the Project or any portion thereof or interest therein shall contain an express provision making



such conveyance subject to the covenants and conditions of this Covenant, provided however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants and conditions, regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed or other instrument.

## SECTION 11 — ENFORCEMENT

A. Enforcement Provisions. The Owner shall exercise reasonable diligence to comply with the requirements of this Covenant and shall correct any such noncompliance within sixty (60) days after such noncompliance is first discovered by the Owner or would have been discovered by the exercise of reasonable diligence, or within 60 days after the Owner receives notice of such noncompliance from the City or its Designee; provided however, that such period for correction may be extended by the City if the Owner is exercising due diligence to correct the noncompliance. If such noncompliance remains uncured after such period, then the Owner shall be in default and the City on its own behalf may take any one or more of the following steps:

1) By any suit, action or proceeding at law or in equity, require the Owner to perform its obligations under this Covenant or the Property Tax Exemption Agreement, or enjoin any acts or things which may be unlawful or in violation of the rights of the City hereunder; it being recognized that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of the Owner's default;

2) Have access to, and inspect, examine, and make copies of, all of the books and records of the Owner pertaining to the Project. Provided, however, the City or its Designee shall not divulge such information to any third party unless required by law or unless the same is necessary to enforce the City's rights hereunder; and

3) Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, conditions and agreements of the Owner under this Covenant.

4) The Owner hereby grants to the City or the Designee the option, upon Owner's default under this Covenant, for the Qualified Project Period to lease up to 17 of the units in the Project as mutually selected by the City or its Designee and the Owner for the purpose of subleasing such units to Eligible Households, but only to the extent necessary to comply with the provisions of this Covenant. The City or its Designee may lease from the Owner the units at the Affordable Rent level less a reasonable management fee to reimburse the City or its Designee for any expenses incurred in connection with such sublease. The City or its Designee may terminate its lease of the units in the Project upon determination that the Owner is no longer in default pursuant to this Covenant.

B. Hold Harmless. The Owner shall defend, indemnify, and hold the City, its officers, officials, employees, volunteers and its Designee and any other party authorized hereunder to enforce the terms of this Covenant, harmless from any and all claims, injuries, damages, losses, or suits, including reasonable attorney fees, arising out of or resulting from this Covenant except for injuries or damages caused by the sole negligence of the City.

C. No Third-Party Beneficiaries. The provisions of this Covenant and of the documents to be executed and delivered in connection herewith are and will be for the benefit of the Owner, the City and its Designee only and are not for the benefit of any third party (including, without limitation, any tenants or tenant organizations), and accordingly, no third party shall have the right to enforce the provisions of this Covenant or of the documents to be executed and delivered in connection herewith.

#### SECTION 12 — SUBORDINATION, TERMINATION, RIGHTS RESERVED BY HUD

A. Notwithstanding any provision in this Covenant to the contrary, all of the provisions of this Covenant shall terminate and have no further force and effect upon the occurrence of one of the following events:

1) Foreclosure of a HUD/FHA insured loan is initiated under which the Project is held as a security.

2) Title to the Project is acquired by Lender or HUD/FHA by deed in lieu of foreclosure of the Deed of Trust.

3) Title to the Project is acquired by HUD/FHA, Veterans Administration ("VA"), Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC") or another party upon foreclosure of a deed of trust or mortgage ("Deed of Trust") insured, made or held by HUD/FHA, VA, FNMA, FHLMC; or an institutional, third-party lender or investor (collectively, "Lender").

4) The Deed of Trust, if insured by HUD/FHA, is assigned to HUD/FHA.

Notwithstanding anything in this Covenant to the contrary, enforcement of this Covenant shall not serve as a basis for (i) default under the Deed of Trust insured by HUD/FHA or any other Lender, or (ii) an acceleration of the loan secured by the Deed of Trust ("Loan"), or result in any claim against the Project, the Loan proceeds, any reserve or deposit required by HUD/FHA or any other Lender in connection with the Loan transaction or the rents or other income from the Project other than from available surplus cash as that term is defined by HUD/FHA or any other Lender.

B. Notwithstanding anything in this Covenant to the contrary:

1) All of the provisions of this Covenant are subordinate and subject to the Deed of Trust, the Loan, and all documents relating to the Loan ("Loan Documents"), if any, as well as all applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended, and the rights of the Lender thereunder. In the event of any conflict between this Covenant and the provisions of any applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended, the applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended, will control.

2) Lender shall take no role in monitoring compliance with state and federal use and occupancy requirements; nor shall Lender be required to provide notice to third parties of actions under the Deed of Trust, if any.

3) No amendment to this Covenant will be effective without the prior written consent of Lender, if any.

4) The Owner, its successors or assigns, will take all steps necessary to comply with this Covenant; provided that the Owner, its successors or assigns, shall not be required to take action prohibited by, or to refrain from action required by Lender, pursuant to the National Housing Act (as amended), applicable HUD/FHA mortgage insurance regulations, related administrative requirements, Section 8 of the Housing Act of 1937, as amended, and the regulations thereunder, as amended, or the Loan and the Loan Documents.

#### SECTION 13 — ESTOPPEL CERTIFICATE

The City agrees, upon the request of the Owner or its successor in interest, to promptly execute and deliver to the Owner or its successor in interest or to any potential or actual purchaser, mortgagor or encumbrance of the Project, a written certificate stating, if such is true, that the City has no knowledge of any violation or default by the Owner of any of the covenants or conditions of this Covenant, or if there are such violations or defaults, the nature of the same.

#### SECTION 14 — AGREEMENT TO RECORD

The Owner shall cause this Covenant to be recorded in the real property records of King County, Washington. The Owner shall pay all fees and charges incurred in connection with such recording and shall provide the City or its Designee with a copy of the recorded document.

## SECTION 15 — RELIANCE

The City and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by City and the Owner. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owner and Eligible Households, and upon audits of the books and records of the Owner pertaining to occupancy of the Project. In performing its duties hereunder, the Owner may rely on the Certificates of Household Eligibility unless the Owner has actual knowledge or reason to believe that such Certificates are inaccurate.

## SECTION 16 — GOVERNING LAW

This Covenant shall be governed by the laws of the State of Washington, except to the extent such laws conflict with the laws of the United States or the regulations of federally insured depository institutions or would restrict activities otherwise permitted in relation to the operation of federally insured depository institutions.

## SECTION 17 — NO CONFLICT WITH OTHER DOCUMENTS

The Owner warrants that it has not executed and will not execute, any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event the requirements of this Covenant are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith except for the Multifamily Housing Limited Property Tax Exemption Agreement referenced in Section 21 herein.

## SECTION 18 — AMENDMENTS

This Covenant shall be amended only by a written instrument executed by the parties hereto or their respective successors in title, and duly recorded in the real property records of King County, Washington. Amendments to **Exhibit B** shall be considered to be approved in writing when the revised **Exhibit B** is signed by the Owner and the City or its Designee without the need for a further written document attaching the revised exhibit and striking prior versions of the exhibit. In the event of conflict between versions of **Exhibits B**, the version maintained by the City or its Designee as the then-current version, signed by Owner and City or its Designee, shall prevail.

## SECTION 19 — NOTICE

Any notice or communication hereunder, except legal notices, shall be in writing and may be given by registered or certified mail. The notice or communication shall be deemed to have been given and received when deposited in the United States Mail, properly addressed with postage prepaid. If given otherwise, it shall be deemed to be given when delivered to and received

by the party to whom addressed. Such notices and communications shall be given to the parties hereto at their following addresses:

If to the City:                      Planning Department-Housing Planner  
   City of Kirkland  
   123 Fifth Avenue  
   Kirkland, WA 98033

With a copy to the Designee

A Regional Coalition for Housing (ARCH)  
16225 NE 87th Street, Suite A-3  
Redmond, WA 98052  
Attn: Housing Planner

If to the Owner:                      MRM Kirkland LLC  
   PO Box 1743  
   Bellevue, WA 98009  
   Attn: Jeff Williamson

Any party may change its address for notices upon ten (10) days prior written notice to the other parties. Legal counsel for a party may deliver notices on behalf of the represented party and such notice shall be deemed delivered by such party.

#### SECTION 20 — MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION CONTRACT

This Covenant is subject to the terms and conditions of the Property Tax Exemption Contract. In the event of any conflict between the terms of this section and the terms of the Property Tax Exemption Contract, the terms of the Property Tax Exemption Contract shall control. All amounts payable hereunder shall be paid without any set-off or deduction of any nature. This provision shall survive termination of the Covenant prior to expiration of the Qualified Project Period.

#### SECTION 21 — SEVERABILITY

If any provision of this Covenant shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

#### SECTION 22 — CONSTRUCTION

Unless the context clearly requires otherwise, words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate and words of the

singular number shall be construed to include the plural number, and vice versa, when appropriate. All the terms and provisions hereof shall be construed to effectuate the purposes set forth in this Covenant and to sustain the validity hereof.

#### SECTION 23 — TITLES AND HEADINGS

The titles and headings of the sections of this Covenant have been inserted for convenience of reference only, are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this document or any provision hereof or in ascertaining intent, if any question of intent shall arise.

IN WITNESS WHEREOF, the Owner and City have each executed the Declaration of Affordable Housing Covenants on the Date first above written.

Owners:

City:

MRM KIRKLAND LLC

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Joe Razore  
Its Manager

---

Tracey Dunlap  
Its: Deputy City Manager

Approved as to Form:

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City Attorney



**CITY OF KIRKLAND**  
**Department of Public Works**  
**123 Fifth Avenue, Kirkland, WA 98033**  
**425.587.3800 [www.kirklandwa.gov](http://www.kirklandwa.gov)**

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## **MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Julie Underwood, Public Works Director  
Christian Knight, Neighborhood Outreach Coordinator

**Date:** June 24, 2021

**Subject:** 2020 STREETS AND PEDESTRIAN SAFETY REPORT

### **RECOMMENDATION:**

It is recommended that the City Council approve the attached Resolution adopting the 2020 Accountability Report for Proposition 1, the 2012 Streets and Pedestrian Safety Levy. By approving the consent calendar, the Council is adopting the 2020 Accountability Report.

### **BACKGROUND DISCUSSION:**

On November 6, 2012, Kirkland voters approved Proposition 1 as a new source of property tax revenue for significant street maintenance and safety improvements throughout the City. To ensure that Kirkland's residents can monitor the progress toward the established goals of the levy, an accountability report is required to be provided annually.

The Streets and Pedestrian Safety Levy Report explains Kirkland's strategy for street preservation and the policy basis of the City's balanced transportation goal. It describes how residents can nominate capital improvement projects through the interactive Suggest-a-Project online map and demonstrates the Streets Levy's accomplishments, together with all street and pedestrian safety work funded with Proposition 1 revenues in the respective year.

As has been reported to the City Council in prior accountability reports, the current report devotes most of its content to the targets of the Streets Levy. These targets were identified on the ballot and the voter fact sheet at the time of adoption, and the report tracks Kirkland's progress toward those stated goals. The 20-year targets include \$60 million in total spending—roughly \$54 million toward street preservation and \$6 million to pedestrian safety.

With the Council's approval, staff will post the Accountability Report on the City's website and distribute via the City's e-newsletter and listservs. In addition, staff will have hard copies available at City facilities and notify residents of the availability of the report through a press release.

Resolution

Exhibit A to Resolution: 2020 Streets Levy Accountability Report



## RESOLUTION R-5483

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ADOPTING THE 2020 STREETS LEVY ACCOUNTABILITY REPORT FOR PROPOSITION 1—LEVY FOR STREET MAINTENANCE AND PEDESTRIAN SAFETY.

1 WHEREAS, the Kirkland City Council adopted Ordinance No.  
2 4364 on July 17, 2012 to place Proposition 1 on the ballot, described  
3 the restricted uses for the funding, and established a requirement to  
4 produce an accountability report annually that documents the actions  
5 and the status of the programs funded by the Streets Levy; and

6  
7 WHEREAS, in November 2012, Kirkland voters approved  
8 Proposition 1—Levy for Street Maintenance and Pedestrian Safety  
9 ("Streets Levy"); and

10  
11 WHEREAS, the 2020 Streets Levy Accountability Report reflects  
12 the allocation of Street Levy funds to fund street maintenance and  
13 safety improvements for arterial, local, and neighborhood streets,  
14 including resurfacing, pothole repair, bicycle route enhancements,  
15 pedestrian safety improvements, traffic calming projects, school walk  
16 routes, sidewalks, and crosswalks; and

17  
18 WHEREAS, the 20-year targets in the 2020 Streets  
19 Levy Accountability Report include \$60 million in total spending,  
20 which is approximately \$2.7 million per year for street  
21 preservation and \$300,000 per year for pedestrian safety; and

22  
23 WHEREAS, the City Council desires to adopt the 2020 Streets  
24 Levy Accountability Report.

25  
26 NOW, THEREFORE, be it resolved by the City Council of the City  
27 of Kirkland as follows:

28  
29 Section 1. The Kirkland City Council adopts the 2020 Streets  
30 Levy Accountability Report attached as Exhibit A and incorporated by  
31 this reference.

32  
33 Section 2. The Kirkland City Council authorizes the posting of  
34 the 2020 Streets Levy Accountability Report on the City website and  
35 the distribution of the Report through community meetings and  
36 electronic media.

37  
38 Passed by majority vote of the Kirkland City Council in open  
39 meeting this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

40

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

\_\_\_\_\_  
Kathi Anderson, City Clerk

# Kirkland

A 2020 ACCOUNTABILITY REPORT OF THE STREETS LEVY

## MOVING *forward*

When the pandemic halted progress around the globe, Kirkland found ways to continue with the mission of preserving streets and improving pedestrian safety. PG. 2

### RISING COSTS

How the rising price of oil can affect the number of lane-miles Kirkland can pave. PG. 17

### RAPID WORK

Kirkland continues progress toward Rapid Flashing Beacons goal. PG. 14



Boosted by Levy, street maintenance program repaves 5.4 lane-miles in 2020



# WHAT THE LEVY ACHIEVES

Kirkland's residents approved the Streets Levy in 2012 to better protect their street network and improve pedestrian safety. For eight years, the Levy has been funding projects that accomplish those objectives.



Slurry seal



Overlay

## STREET PRESERVATION *(paved and/or preserved 91 lane-miles of streets)*

The fundamental goal of the Streets Levy is to keep Kirkland's street network in good condition. It achieves this by increasing the lane-mileage the City can repave and preserve every year.

In its first eight years, levy-funds have helped the City

repave more than 34 lane-miles of arterials and protect nearly 70 lane-miles of residential streets. In eight years, the Street Preservation Program has completed 29 percent of Kirkland's 20-year residential street goal and 38 percent of its arterial repaving goal. **See Pages 4 & 5.**

## SCHOOL WALK ROUTES *(helps improve established school walking routes)*

An extensive public participation process in 2001 resulted in a list of 38 priority walk routes, with the goal of completing the list by 2020.



## PEDESTRIAN & BICYCLE SAFETY *(installed 22 Rapid Flashing Beacons)*

Passage of the Streets Levy came with an ambitious promise: Replace 32 damaged in-pavement crosswalk flashers with Rapid Flashing Beacons, and then install 18 more.

Eight years in, the levy has paid for the installation of 22 sets of Rapid Flashing Beacons—44 percent of the 20-year goal.

Private development and two other City of Kirkland programs—the Capital Improvement Program and the Neighborhood Safety Program—have paid for the installation of another 27 Rapid Flashing Beacons throughout the city.

The Neighborhood Safety Program has helped Kirkland improve safety for walking and bicycling by funding 50 projects aimed at making walking and bicycling more feasible for more people. The Neighborhood Safety Program also funds the implementation of neighborhood traffic control devices to slow traffic on residential streets. Kirkland



*An elementary school student uses Rapid Flashing Beacons on Northeast 116th Street.*

also leverages its overlay program to improve bicycling safety. **See Pages 7-15.**

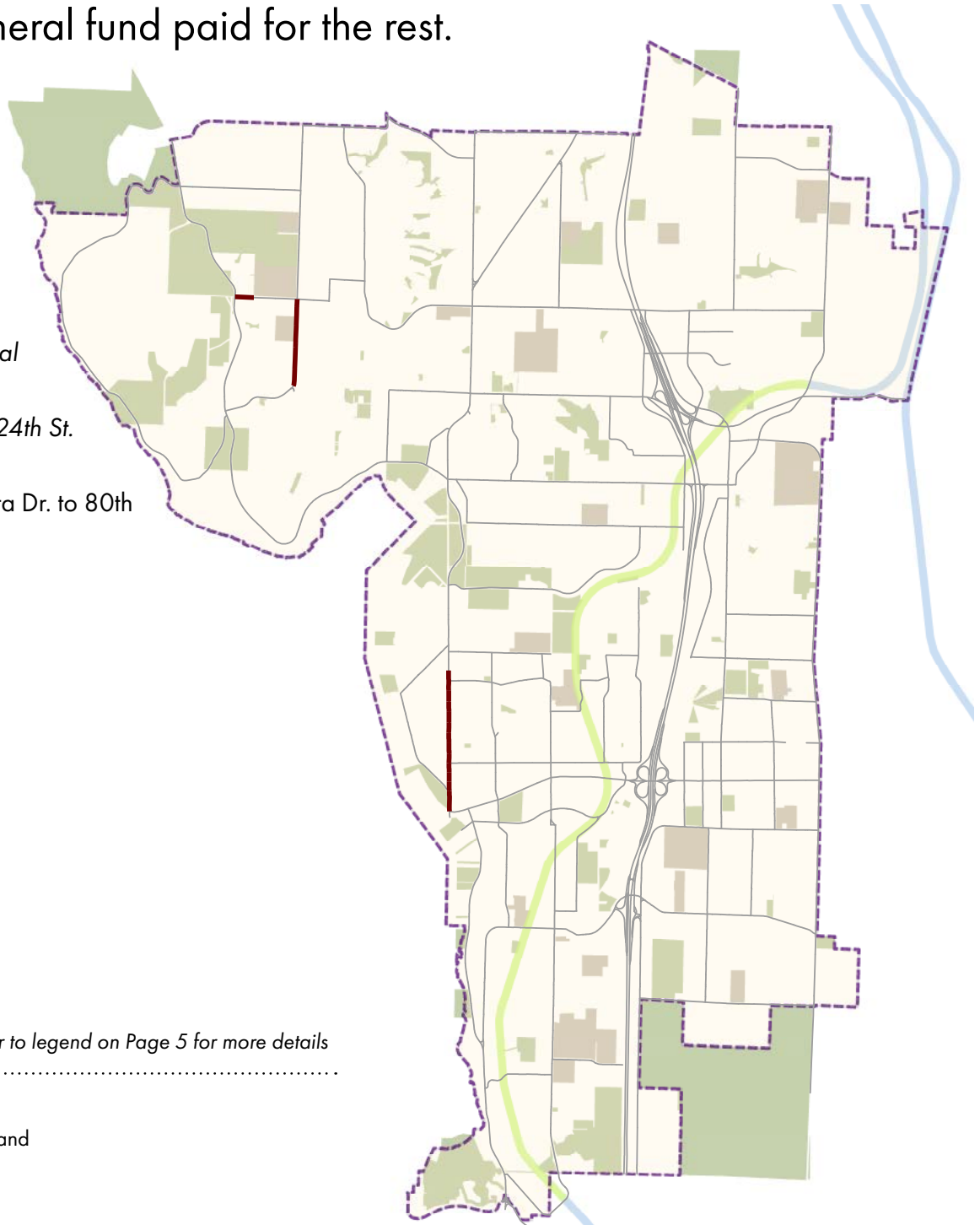


# ANOTHER 5.4 LANE MILES

The levy funded 3.1 of the 5.4 lane-miles Kirkland repaved in 2020. Kirkland's general fund paid for the rest.

The levy helped Kirkland repave 5.4 lane-miles on sections of three arterials. Those three streets are:

- Market Street (Central Way to 16th Ave.)
- 84th Ave. NE (NE 124th St. to NE 132nd St.)
- NE 132nd St./Juanita Dr. to 80th Ave. NE)



## LEGEND *Refer to legend on Page 5 for more details*

- Streets repaved with 2020 levy and City funds

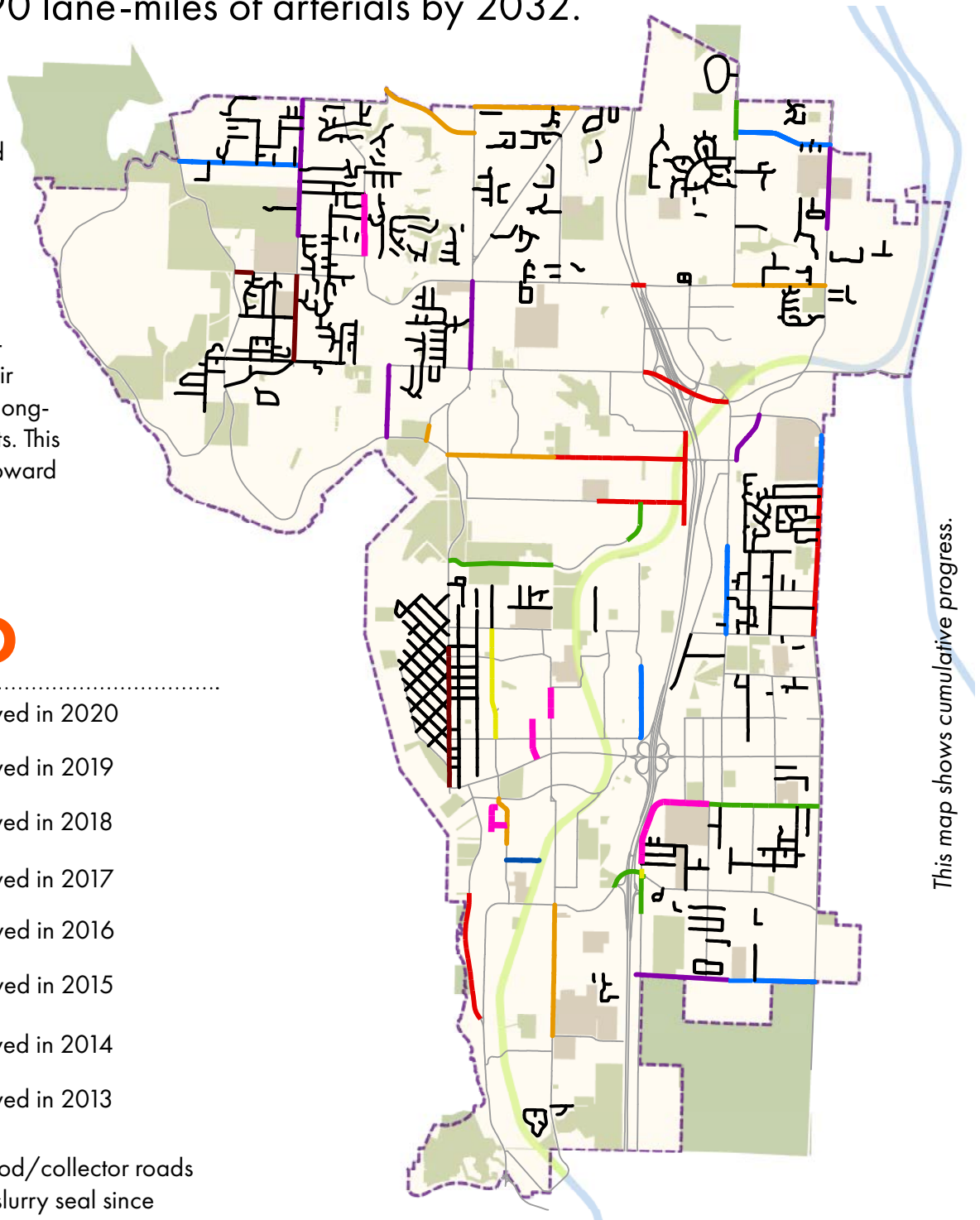
# PROGRESS CONTINUES

The levy is on track to preserve 240 lane-miles of neighborhood roads and repave 90 lane-miles of arterials by 2032.

Kirkland's residents approved an ambitious set of goals in 2012 when they passed the levy: slurry seal every eligible neighborhood road; repave 90 lane-miles of arterials; repair potholes; and reduce long-term maintenance costs. This map tracks progress toward achieving those goals.

## LEGEND

- Streets repaved in 2020
- Streets repaved in 2019
- Streets repaved in 2018
- Streets repaved in 2017
- Streets repaved in 2016
- Streets repaved in 2015
- Streets repaved in 2014
- Streets repaved in 2013
- Neighborhood/collector roads sealed with slurry seal since
- Cross Kirkland Corridor



This map shows cumulative progress.

# THE BENEFIT OF **early** ACTION

As road conditions decline, the costs to repair roads skyrocket. The levy is helping Kirkland preserve roads **before** their conditions decline beyond a monetary point of no return.

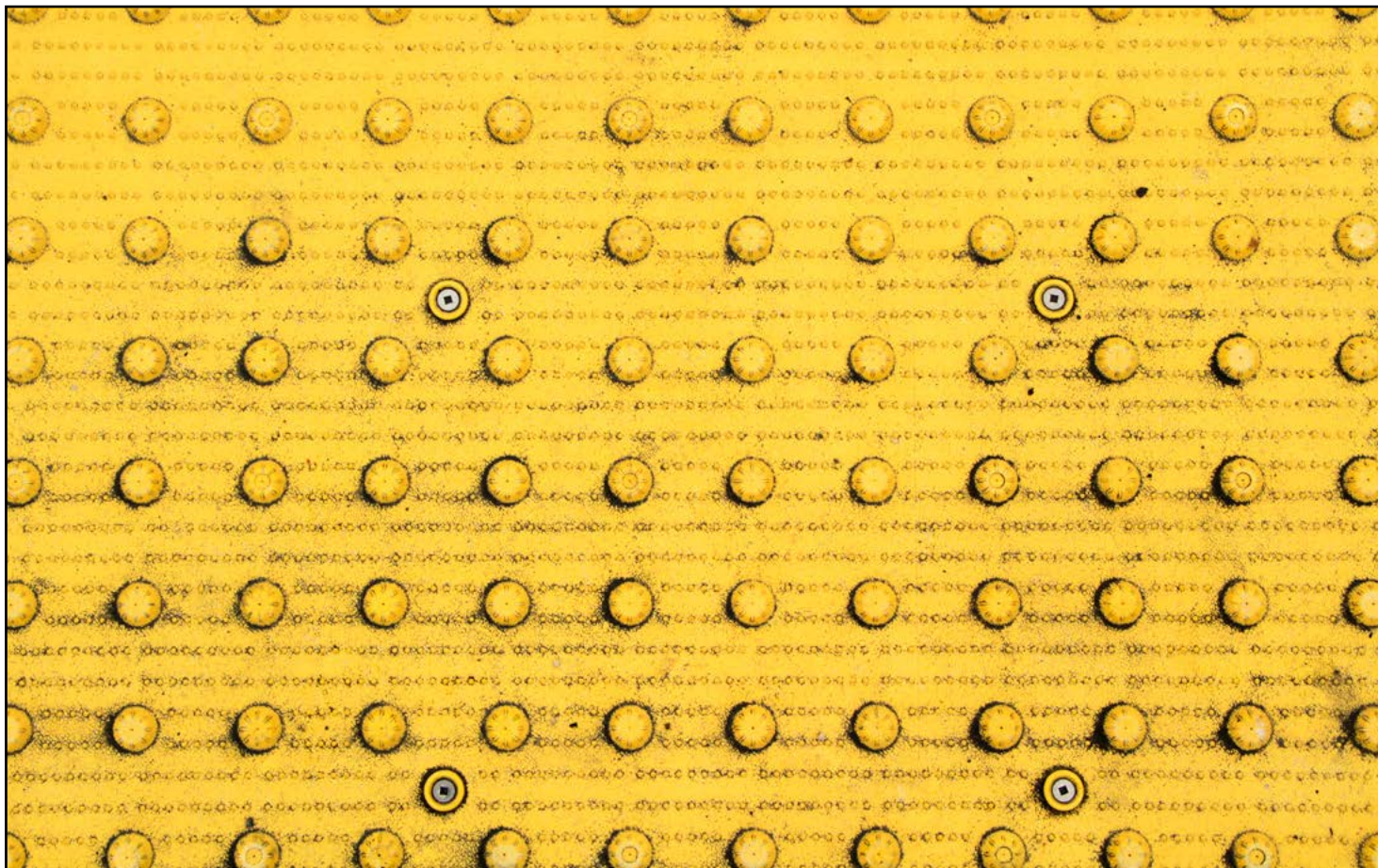


**Condition:** A few superficial cracks  
**Treatment:** Slurry seal  
**Cost:** \$3,400/  
city block

**Condition:** Linear & "alligator cracks"; rutting  
**Treatment:** Crack seal/resurface  
**Cost:** \$49,000/  
city block

**Condition:** Extensive "alligator cracks;" potholes  
**Treatment:** Reconstruct  
**Cost:** \$165,000/  
city block





*A tactile warning mat uses texture to alert the visually impaired that they are about to enter the roadway. These mats have been a common feature of sidewalk access ramps since the 1990 passage of the Americans with Disabilities Act.*

# IMPROVING ACCESS **FOR ALL**

Rebuilding sidewalk curb ramps provides access for all travelers.

Every year, the City of Kirkland improves sidewalk access for those who travel by wheelchair, with the aid of a white cane or other forms of mobility—or sight-assistance. Kirkland's Street Preservation program has rebuilt 487 curb ramps since 2013, when Streets Levy funds first became available. The levy has paid for 215 of them.

In 2020, the Streets Levy paid for the reconstruction of nine curb ramps.

This is part of a long-term effort to ensure all travelers

can safely ascend and descend each of Kirkland's nearly 4,000 curb ramps.

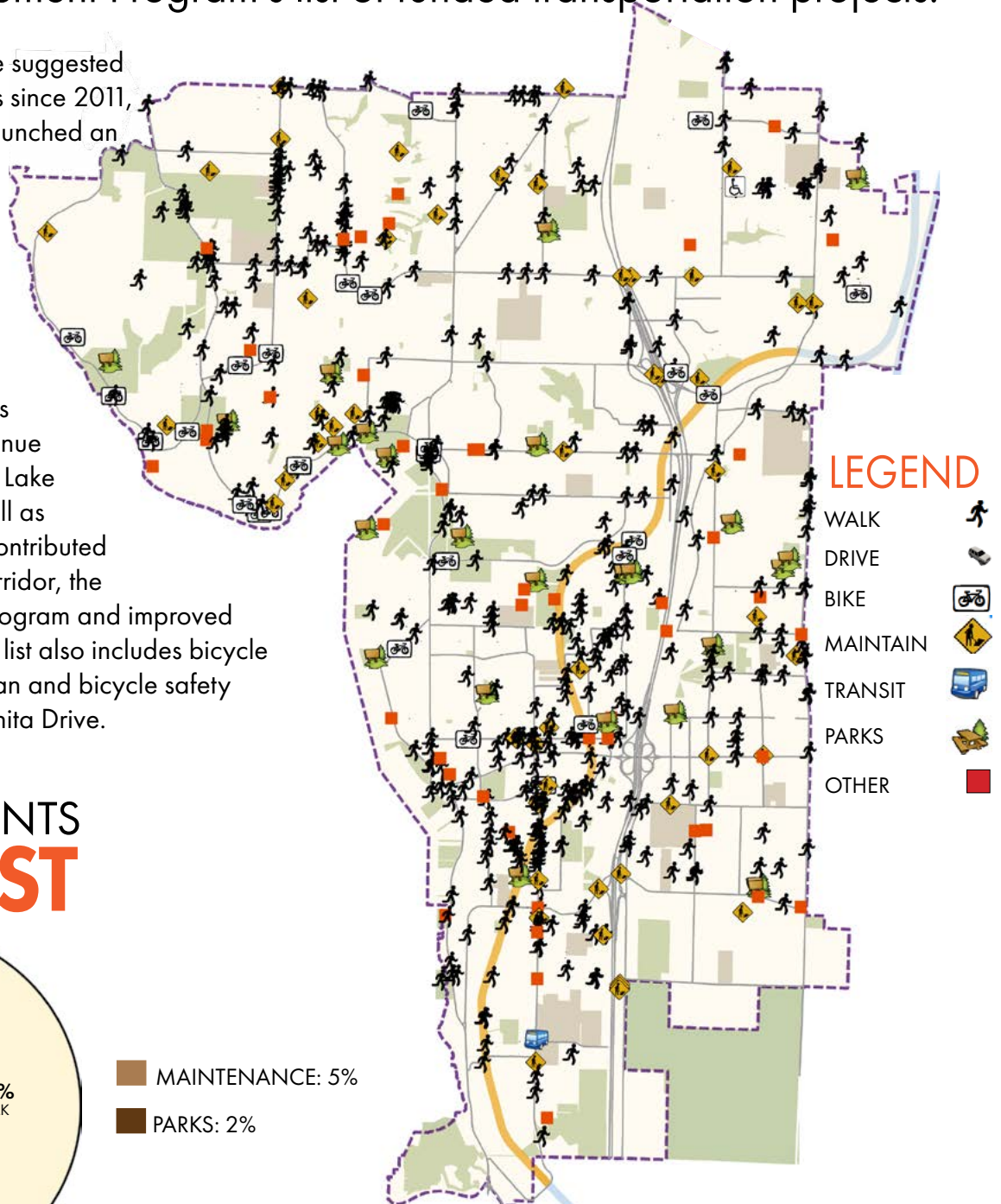
Fundamental to that effort is mounting a tactile warning strip, which is often the only clue a vision-impaired traveler is entering a traffic zone.

For those who travel by wheelchair, having a landing at the top of the curb ramp—a flat space to turn—can make the difference between traveling safely on a sidewalk or unsafely in the street. ◀

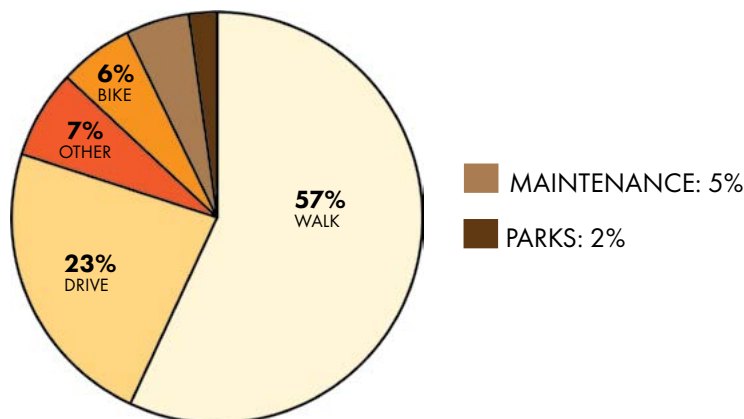
# SUGGEST-A-PROJECT

Residents suggested more than a third of the projects included in the Capital Improvement Program's list of funded transportation projects.

Kirkland residents have suggested nearly 1,300 projects since 2011, when Kirkland leaders launched an interactive map that invites the public to contribute ideas. More than a third of those suggestions are in the 2019-2024 Capital Improvement Program. That list includes the designs of 100th Avenue Northeast and the Totem Lake Connector Bridge, as well as dozens of projects that contributed to the Cross Kirkland Corridor, the Neighborhood Safety Program and improved School Walk Routes. The list also includes bicycle greenways and pedestrian and bicycle safety improvements along Juanita Drive.



## WHAT RESIDENTS SUGGEST



Search "suggest a project" on [www.kirklandwa.gov](http://www.kirklandwa.gov)



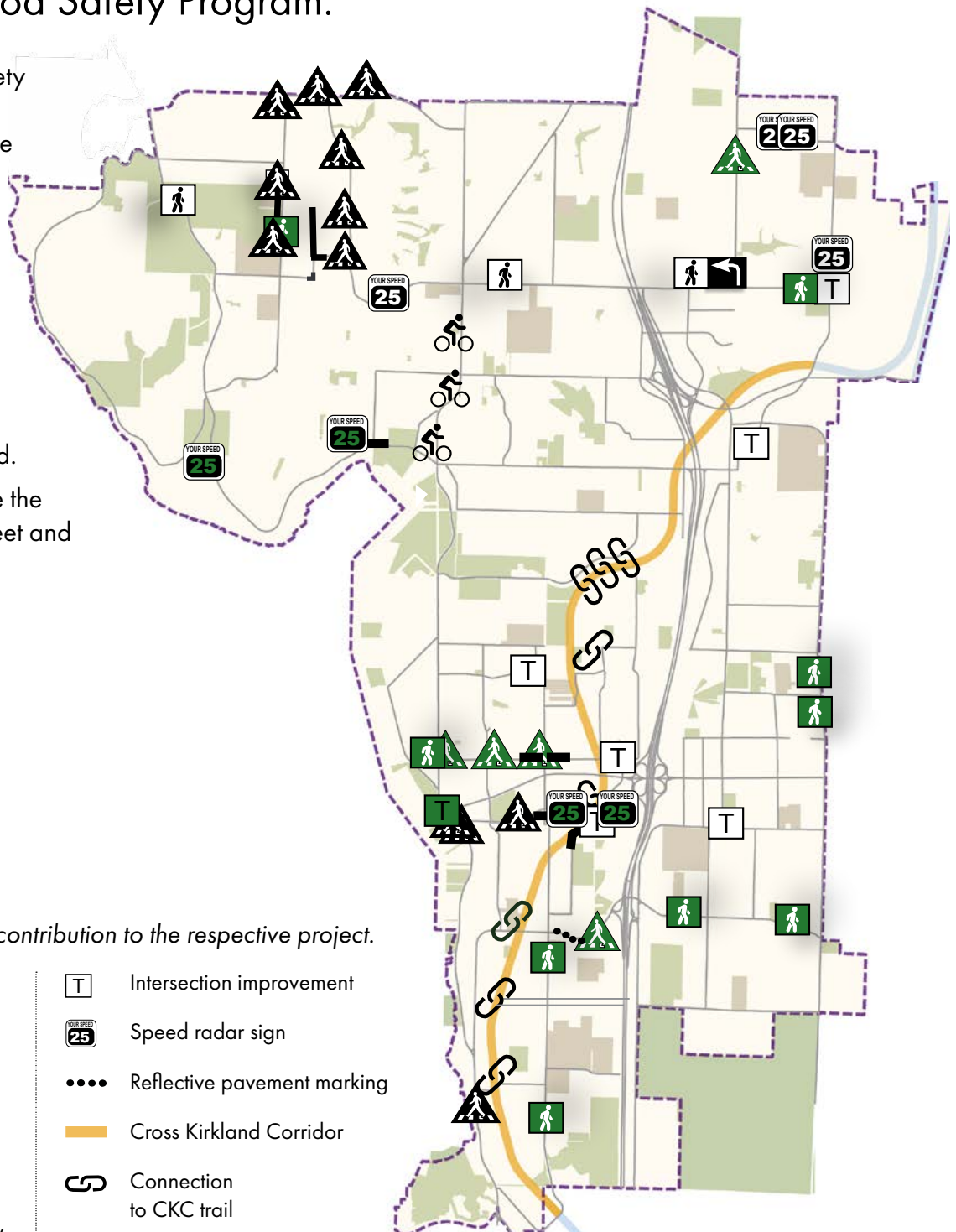
# TAKING SUGGESTIONS

The Streets Levy is funding resident's Suggest-A-Project ideas through the Neighborhood Safety Program.

The Neighborhood Safety Program has built 53 projects that residents have requested since 2014 through the Suggest-A-Project interactive mapping system.

Construction begins in summer 2021 on 2020's neighborhood safety program project, which the levy helped fund.

That project will improve the intersection at Market Street and Central Way.



## LEGEND

Green icons indicate levy-contribution to the respective project.

- |                       |                             |
|-----------------------|-----------------------------|
| RFB                   | Intersection improvement    |
| Levy-funded RFB       | Speed radar sign            |
| Crosswalk             | Reflective pavement marking |
| Left-turn pocket      | Cross Kirkland Corridor     |
| Bike improvement      | Connection to CKC trail     |
| Extruded curb/walkway |                             |





# Economy of scale

The Levy has enabled Kirkland to eliminate its backlog of neighborhood streets in need of slurry seal

**T**he City of Kirkland is resuming its slurry seal program in 2021 after achieving a major milestone in 2019: completion of Kirkland's once-looming backlog of slurry seal-eligible neighborhood streets.

"The Streets Levy has accomplished its first major goal," said George Minassian,

Kirkland's streets engineer. "It has prevented scores of neighborhood streets from deteriorating to the point where they are no longer treatable in a cost-effective way."

The treatment to which Minassian is referring is slurry seal, a mixture of water, fine gravel and emulsified asphalt that is





effective only on streets that have shown some wear, but are otherwise in good condition.

In 2012, Kirkland's engineers identified more than 100 lane-miles of neighborhood streets that would deteriorate beyond slurry seal's capacity to restore them—if the City didn't treat them with slurry seal within a few years.

Kirkland's voters passed the Streets Levy. And the Streets Levy helped Kirkland slurry seal 30 lane-miles of residential streets each year in 2013, 2014 and 2015. "That's when we caught up," he said.

Streets, however, are in a state of constant deterioration. So streets that were not great candidates for slurry seal in 2020 have become ideal candidates in 2021.

This has provided Kirkland with a critical mass of streets to be slurry sealed, which reduces the cost to slurry seal each street.

"We now have an economy of scale," Minassian says.

Minassian is planning to slurry seal a dozen lane-miles of streets in 2021—mostly in the Rose Hill, Bridle Trails and Central Houghton neighborhoods.

Minassian says slurry seal has performed well in Kirkland throughout the last decade.

"Slurry sealed roads are lasting longer than we had originally forecasted," he said. "We had expected seven years out of them. But they are lasting between eight and 10 years."

*\*The City of Kirkland has dozens of neighborhood streets that have deteriorated beyond slurry seal's capacity for restoration. Kirkland's street engineers evaluate those streets for other, more costly restoration methods.*



# FLASHING BEACONS IN 2020

Kirkland funded three Rapid Flashing Beacons in 2020.

Kirkland's capital improvement program funded three sets of Rapid Flashing Beacons in 2020. Those are indicated by the red pedestrian symbols.

- 84th Ave NE at NE 137th St.
- Central Way at Main Street
- NE 116th St. at 108th Ave. NE

The table on page 16 includes these three projects.

The City of Kirkland—and its partners—have installed 53 sets of Rapid Flashing Beacons since 2012, when residents approved the Streets Levy. The levy funded 22 of those and contributed funds to three others.









# PROGRESS TOWARD THE GOAL

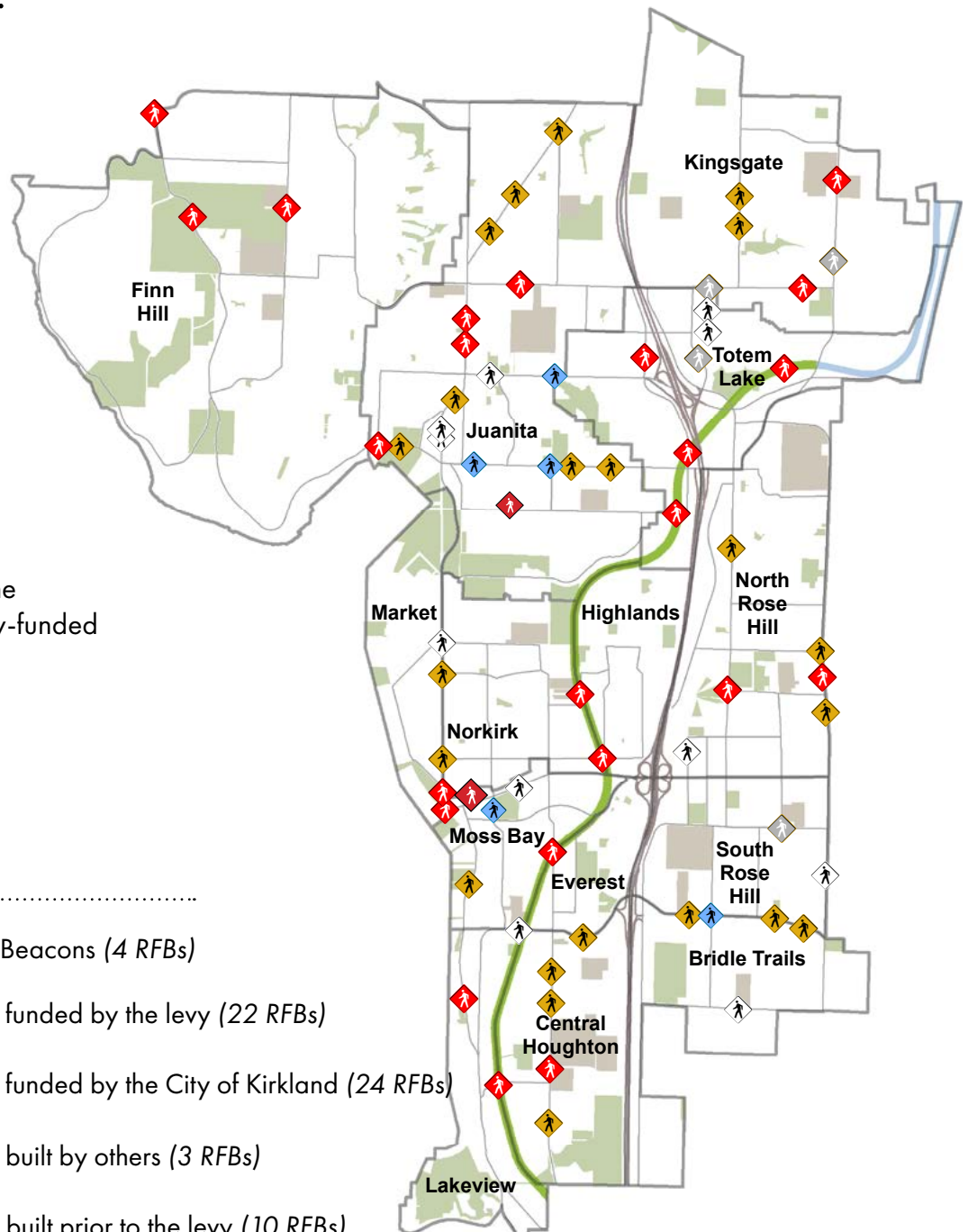
By 2033, the levy will have paid for 50 Rapid Flashing Beacons throughout the City.

With its Complete Streets Ordinance, school walk routes, Rapid Flashing Beacon Initiative, and crosswalk flag program, Kirkland has asserted its commitment to walkability. The voter-approved Levy allows the City to improve safety at 50 crosswalks by 2033. This map shows Kirkland's completed Rapid Flashing Beacons, as well as the planned locations of future levy-funded Rapid Flashing Beacons.

## LEGEND

Refers to maps on pages 12 & 13

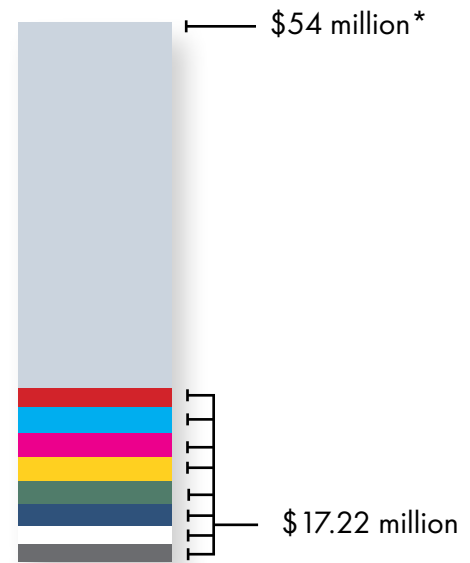
-  Planned Rapid Flashing Beacons (4 RFBs)
-  Rapid Flashing Beacons funded by the levy (22 RFBs)
-  Rapid Flashing Beacons funded by the City of Kirkland (24 RFBs)
-  Rapid Flashing Beacons built by others (3 RFBs)
-  Rapid Flashing Beacons built prior to the levy (10 RFBs)
-  Cross Kirkland Corridor



# MAKING IT ALL POSSIBLE

The Levy allows Kirkland to complete pedestrian safety and street preservation projects that it otherwise would not be able to pursue. In 2020, the Levy helped Kirkland to pave 5.4 lane-miles of arterials, stripe 19 crosswalks and improve sidewalk access at 16 curb ramps with the Street Preservation Program. ◀

## TOTAL INVESTMENT (Progress toward levy goal)



## LEGEND

Remaining on 20-year goal

2020

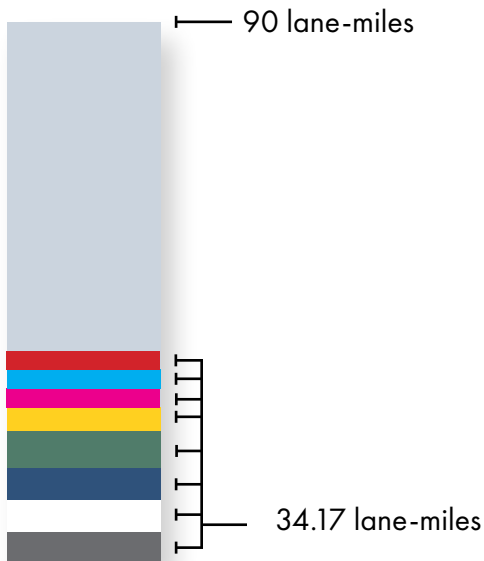
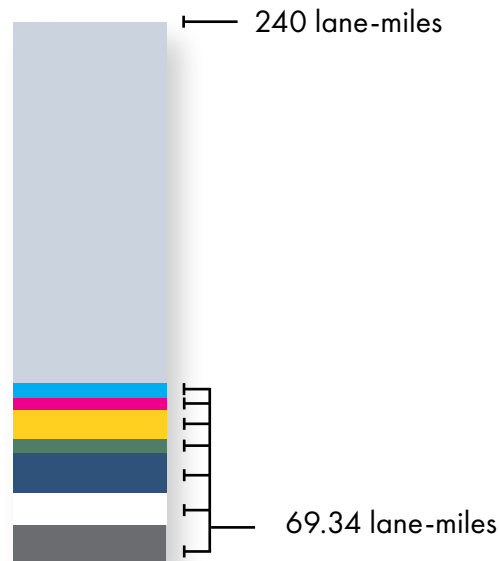
2019

2018

Street Preservation	Annual Average Pre-Levy	Total Levy investment (2013-2019)	Remaining on 20-year goal
Investment (in millions of dollars)	\$1.75	\$15.35	\$1.75
Arterials (in lane miles)	6.2	31.07	6.2
Neighborhood/collector streets (in lane miles)	13.7	69.34	13.7
Pavement Condition Index score for arterials and collectors	57	74.6	57
Crosswalk striping (in crosswalks)	19.5	87	19.5
Sidewalk access (in curb ramps)	30	206	30

\*Based on a projection of \$2.7 million in annual levy revenue dedicated to street preservation for 20 years.



**ARTERIAL REPAVING***(Progress toward levy goal)***NEIGHBORHOOD STREET PRESERVATION***(Progress toward levy goal)*

18

2017

2016

2015

2014

2013

Kirkland's 2020 investments			20-Year Target	Total Levy investment (2013-2020)	Levy's progress toward 20-year goal (2013-2020)
Levy	Other Funds	Total			
1.87	\$1.43	\$3.30	\$54.00	\$17.22	31.9%
3.1	2.3	5.4	90	34.17	38%
0	0	0	240	69.34	29%
		76.6	70	76.6	
10	9	19	230	97	42%
9	7	16	500	215	43%

s. Pedestrian safety projects are projected to received \$300,000 annually for a 20-year total of \$6 million.

# ENHANCING WALKABILITY

The levy provides a funding option for a variety of projects focused on improving walking and bicycling. In 2020, the levy funded a Neighborhood Safety Program project that will improve the way people cross Central Way's intersection with Market Street.

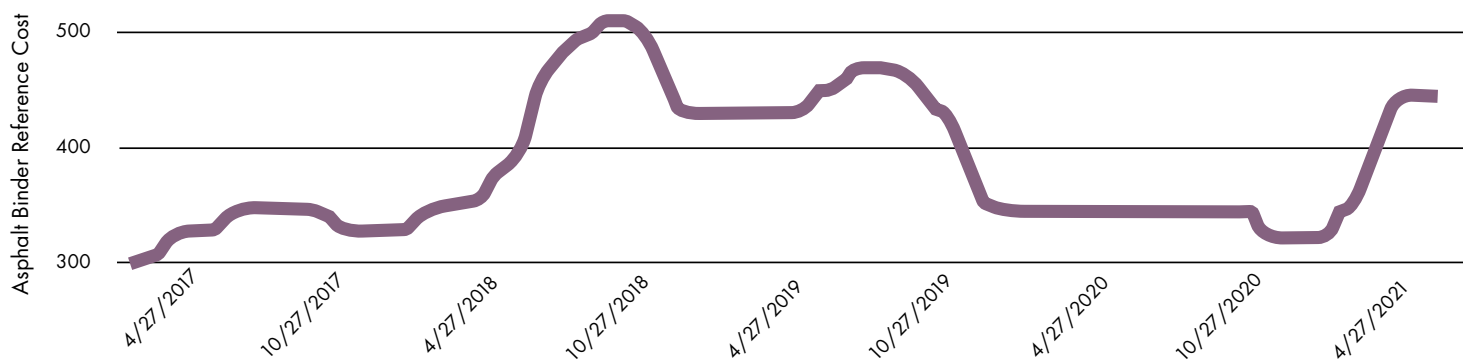
2020 NEIGHBORHOOD SAFETY PROGRAM			INVESTMENT	
Improvement type	Neighborhood	Levy funds	City funds	Total
Intersection re-channelization	<b>Moss Bay</b> (Central Way/Market)	\$100,000	\$10,000	\$110,000
Total		\$100,000	\$10,000	\$110,000
Previous Years		\$201,093	\$1,190,053	\$1,427,146
Progress to Date		\$301,093	\$1,200,053	\$1,537,146

2020 RAPID FLASHING BEACONS	ON A SCHOOL WALK ROUTE?			INVESTMENT		
Location	No	Yes	School	Levy	Other Funds	Total
<b>Moss Bay</b> (Central Way and Main Street)	1			0	\$170,000	\$170,000.00
<b>Juanita</b> (NE116th Street & 108th Ave. NE)		1	AG Bell	0	\$75,675.00	\$75,675.00
<b>Finn Hill</b> (84th Ave. NE and NE 137th St.)		1	FHMS, Thoreau	0	\$110,000	\$110,000.00
RFB Total 2020	1	2		0	\$355,675	\$355,675.00
Previous Years	25	25		\$1,178,349	\$1,296,186	\$2,474,535.18
Progress To Date	26	27		\$1,178,349	\$1,651,861	\$2,830,210.18

2020 SIDEWALKS	ON A SCHOOL WALK ROUTE (linear feet)			INVESTMENT			
Neighborhood	No	Yes	School	Levy	City Funds	Grant Funds	Total
124th Ave. NE (NE 92nd St. to NE 108th Pl.)	3,800			0	\$2,214,894	\$275,000	\$2,489,894
2020 Total	3,800			\$0	\$2,214,894	\$275,000	\$2,489,894
Previous Years	17,306			\$41,458	\$7,556,517	\$1,708,107	\$9,306,082
Progress to Date	21,106			\$41,458	\$9,771,411	\$1,983,107	\$11,795,976

# PURCHASING POWER

The rising prices of oil and asphalt could reduce the number of lane-miles Kirkland can pave in the near future. As the chart below indicates, however, prices are still below the fall 2018 peak.



**A**sphalt prices in western Washington held at \$445 per binder in June 2021, after jumping \$122 in the span of two months.

The rising costs of oil are a primary driver, says George Minassian, Ph.D., Kirkland's capital projects supervisor and an expert in pavement materials.

And oil prices—coupled with those for labor and other relevant commodities, such as gravel—could limit the lane-miles of streets Kirkland can repave in the near future.

"Our biggest cost is oil," says Cliff Schroeder, general manager for Watson Asphalt Paving Company, the

contractor Kirkland hired to pave arterials in 2021.

"And oil's price is going up. I just got another notice yesterday. It's going to peak out higher than we've ever had."

If prices level off, however, as they did in spring, the recent price-increases will likely have little effect on the number of lane-miles Kirkland is able to pave.

That's because, by law, paving contractors must first absorb the first five percent of escalating prices.

"It's worked the other way too," Schroeder says. "When oil prices went down, we were given a credit back."



*Gravel awaits processing at the Watson Asphalt Paving Company's Redmond facility. More than five percent of asphalt's total weight is oil.*

# WHERE PROPERTY TAXES GO

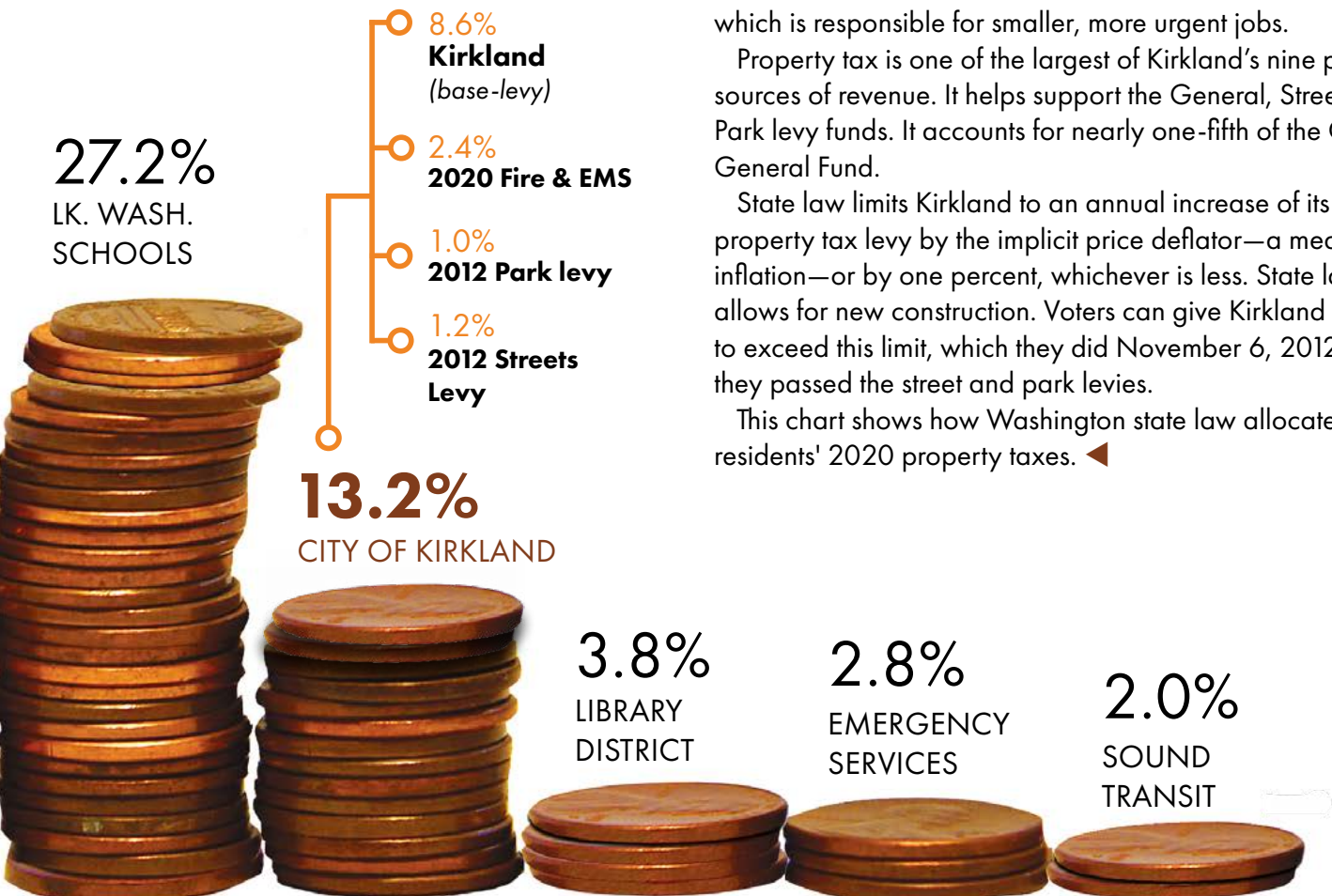


## THE PRICE OF KIRKLAND'S GOVERNMENT

Some local governments, including Kirkland, use a measure called the Price of Government calculation to help define a range of affordability for government services. The Price of Government is the sum of all taxes, fees and charges collected by the City, divided by the aggregated personal income of its constituents.

Many jurisdictions aim for a range of five to six percent. At four percent, Kirkland's Price of Government is well below that range.

The graph at the right illustrates Kirkland's Price of Government between 2007 and 2020 and its projection for the 2021-2022 budget-cycle. ◀



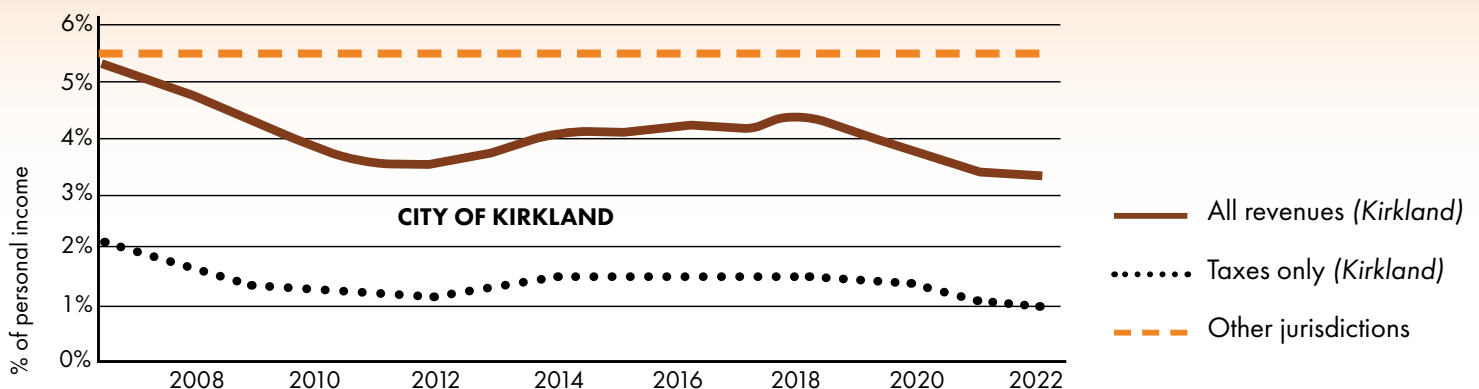
The Streets Levy accounts for less than 1.5 percent of Kirkland residents' property taxes, and yet it pays for more than half of the City's Street Preservation Program.

The Capital Improvement Program pays for the other half—and that half includes Kirkland's Streets Maintenance Division, which is responsible for smaller, more urgent jobs.

Property tax is one of the largest of Kirkland's nine primary sources of revenue. It helps support the General, Street and Park levy funds. It accounts for nearly one-fifth of the City's General Fund.

State law limits Kirkland to an annual increase of its regular property tax levy by the implicit price deflator—a measure of inflation—or by one percent, whichever is less. State law also allows for new construction. Voters can give Kirkland authority to exceed this limit, which they did November 6, 2012, when they passed the street and park levies.

This chart shows how Washington state law allocated residents' 2020 property taxes. ◀





## 2020 KIRKLAND CITY COUNCIL

(425) 587-3001



Mayor Penny Sweet



Deputy Mayor Jay Arnold



Jon Pascal



Toby Nixon



Kelli Curtis



Neal Black



Amy Falcone

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## 2020 TRANSPORTATION COMMISSION

(425) 587-3865

Lisa McConnell, Chair



Kurt Ahrensfield, Vice Chair

Brian Magee♦♦Bradley Haverstein♦♦Doug Jacobson♦♦Hayden Goldberg♦♦Faith Debolt♦♦Terry Marpert

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Jim Lopez, Deputy City Manager (*external affairs*)

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### PUBLIC WORKS

Julie Underwood, Director

(425) 587-3802

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## CITY OF KIRKLAND

### Department of Finance & Administration

123 Fifth Avenue, Kirkland, WA 98033 425.587.3100

[www.kirklandwa.gov](http://www.kirklandwa.gov)

## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Michael Olson, Director of Finance & Administration  
George Dugdale, Financial Planning Manager  
Kevin Lowe Pelstring, Budget Analyst  
Camille Hastings, Recovery Intern

**Date:** June 18, 2021

**Subject:** May 2021 Sales Tax Revenue

### Background

The Financial Planning Division prepares a monthly sales tax revenue memo analyzing monthly and year-to-date activity by business sector, forecasting sales tax revenue in the current year, and tracking key economic indicators to provide additional context for the state of the economy. The general retail sales tax is the City's largest single revenue source after Property Tax, accounting for 18 percent of total budgeted revenues in the General Fund and, along with property and utility taxes, funding public safety and other general government (i.e., non-utility) services. It is also more sensitive to economic cycles than other tax revenues. Accordingly, it is monitored closely by staff—even more so given the economic disruption and uncertainty caused by COVID-19.

There is a two-month lag between when sales tax is generated and when it is distributed to the City by the Washington State Department of Revenue (DOR). Therefore, May sales tax revenue relates to March retail activity in Kirkland.

### May 2021 vs. May 2020

Business Sector Group	May		Dollar Change	Percent Change	Percent of Total	
	2020	2021			2020	2021
Services	520,160	408,476	(111,684)	-21.5%	27.7%	14.9%
Contracting	523,615	758,400	234,785	44.8%	27.9%	27.6%
Communications	41,414	35,815	(5,599)	-13.5%	2.2%	1.3%
Retail:						
Auto/Gas Retail	81,138	501,125	419,987	517.6%	4.3%	18.2%
Gen Merch/Misc Retail	211,607	255,148	43,541	20.6%	11.3%	9.3%
Retail Eating/Drinking	72,291	130,590	58,299	80.6%	3.9%	4.7%
Other Retail	246,605	369,226	122,621	49.7%	13.1%	13.4%
Wholesale	87,372	141,462	54,090	61.9%	4.7%	5.1%
Miscellaneous	93,125	149,547	56,422	60.6%	5.0%	5.4%
<b>Total</b>	<b>1,877,327</b>	<b>2,749,789</b>	<b>872,462</b>	<b>46.5%</b>	<b>100%</b>	<b>100%</b>

Comparing May 2021 to May 2020, sales tax revenue is up \$872,462, or 46.5 percent. However, this includes a \$261,469 taxpayer remittance error, which overstated Services retail activity in March 2020 (resulting in higher distributions to the City in May 2020) and was later removed in the June 2020

distribution by the Washington Department of Revenue (DOR). **Excluding this remittance error from May 2020, sales tax revenue is up \$1,133,931 (70.2 percent) in May 2021.** As this period covers activity from March to March, the 2020 amount covers the first full month of economic impacts of the COVID-19 pandemic in Kirkland. The largest monthly decreases in March 2020 (as compared to February 2020) were in Auto/Gas Retail and Retail Eating/Drinking, although sales tax revenue was impacted in most sectors. A mix of strong growth in 2021 retail activity and sharp economic contraction in the same period in 2020 explain the very significant increase in May 2021 sales tax revenue as compared to May 2020.

In May 2021, significant growth occurred in Auto/Gas Retail (up \$419,987 or 517.6 percent), Contracting (up \$234,785 or 44.8 percent), Other Retail (up \$122,621 or 49.7 percent), Retail Eating/Drinking (up \$58,299 or 80.6 percent), Miscellaneous (up \$56,422 or 60.6 percent), Wholesale (up \$54,090 or 61.9 percent). A moderate decline occurred in Communications (down \$5,599 or 13.5 percent). After excluding the remittance error in the Services sector from May 2020, Services is up \$149,785, or 57.9 percent.

Although Retail Eating/Drinking continues to recover as the community is vaccinated and businesses reopen with fewer restrictions, it has not fully returned to pre-pandemic levels, with March 2021 retail sales (May 2021 revenue) for the sector 16.3 percent below the 2019 average.

#### YTD 2021 vs. YTD 2020

Business Sector Group	YTD		Dollar Change	Percent Change	Percent of Total	
	2020	2021			2020	2021
Services	1,939,070	1,778,151	(160,919)	-8.3%	18.4%	14.8%
Contracting	2,623,876	3,139,307	515,431	19.6%	24.9%	26.1%
Communications	217,665	194,923	(22,742)	-10.4%	2.1%	1.6%
Retail:						
Auto/Gas Retail	1,631,418	2,153,583	522,165	32.0%	15.5%	17.9%
Gen Merch/Misc Retail	1,167,733	1,352,536	184,803	15.8%	11.1%	11.2%
Retail Eating/Drinking	611,861	575,795	(36,066)	-5.9%	5.8%	4.8%
Other Retail	1,367,960	1,653,208	285,248	20.9%	13.0%	13.7%
Wholesale	440,697	554,771	114,074	25.9%	4.2%	4.6%
Miscellaneous	533,350	630,345	96,995	18.2%	5.1%	5.2%
<b>Total</b>	<b>10,533,629</b>	<b>12,032,619</b>	<b>1,498,990</b>	<b>14.2%</b>	<b>100%</b>	<b>100%</b>

Comparing 2021 to 2020, year-to-date (YTD) sales tax revenue is up \$1,498,990, or 14.2 percent. However, this includes two taxpayer remittance errors totaling \$499,925, which overstated Services retail activity in January & March 2020 (resulting in higher distributions to the City in March & May 2020) and were later removed in the June 2020 distribution by the Washington Department of Revenue (DOR). **Excluding the March & May 2020 remittance errors in the Services sector, YTD sales tax revenue is up \$1,998,915 (19.9 percent) overall** and YTD Services sector is up \$339,006 (23.6 percent).

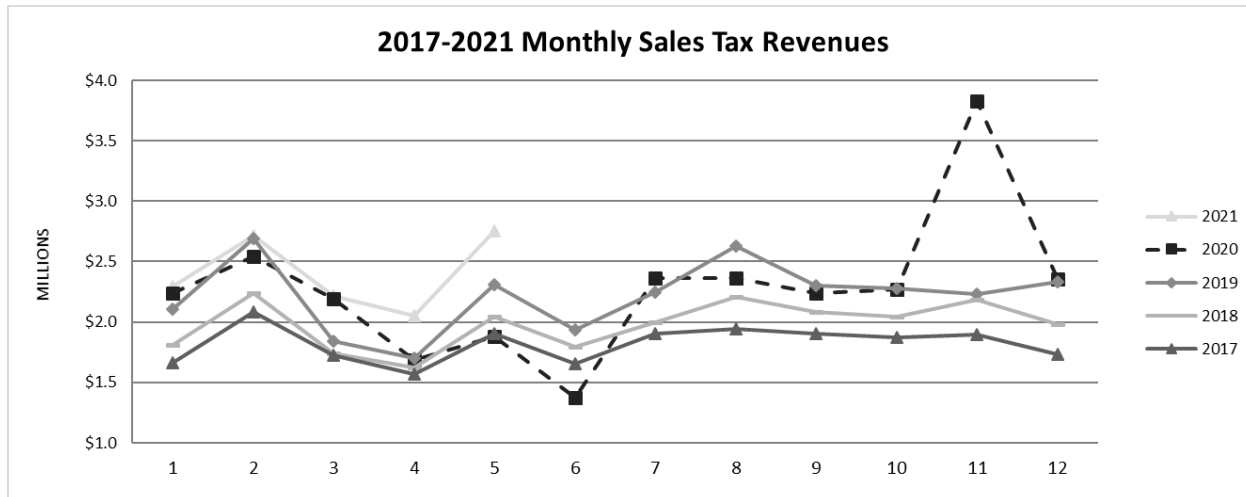
Looking at business sectors, the most significant growth has occurred in Auto/Gas Retail (up \$522,165 or 32 percent), Contracting (up \$515,431 or 19.6 percent), Other Retail (up \$285,248 or 20.9 percent), Gen Merch/Misc Retail (up \$184,803 or 15.8 percent), Wholesale (up \$114,074 or 25.9 percent), and Miscellaneous (up \$96,995 or 18.2 percent). The growth in Other Retail has been led by the Sporting Goods, Non-store Retailers, and Building & Garden sub-sectors.

Noteworthy declines occurred in Communications (down \$22,742, or 10.4 percent). Retail Eating/Drinking is down 5.9 percent due to the Governor's stay-at-home order, which was in effect from November 17th through January 4th, 2021, as well as social distancing requirements, which have limited the number of



customers that can be served throughout 2021 YTD period. This report shows March 2021 retail activity which is the first month following the Governor's 'Roadmap to Recovery' phased reopening plan in which King County moved from Phase 2 to Phase 3 on March 22<sup>nd</sup>.

The chart below shows Kirkland's monthly sales tax revenue through May 2021 compared to the prior four years.



### Key Economic Indicators

Information about wider trends in the economy provides a mechanism to help understand current results in Kirkland and to predict future performance. The combination of consumer confidence, unemployment levels, housing data, inflation, and auto sales provides a broader economic context for key factors in sales tax revenues. Since the sales tax figures reported above are from two months prior, some of the figures in the table below can function as leading indicators for where sales taxes may go in future reports.

Indicator	Most Recent Month of Data	Unit	Month			Yearly Average	
			Previous	Current	Change	2020	2021
Consumer Confidence							
Consumer Confidence Index	May	Index	117.5	117.2	(0.3)	101.0	106.4
Unemployment Rate							
National	May	%	6.1	5.8	(0.3)	8.1	6.1
Washington State	March	%	6.4	6.3	(0.1)	8.4	6.5
King County	March	%	5.4	5.5	0.1	7.6	5.7
Kirkland	March	%	4.4	4.8	0.4	6.2	4.8
Housing							
New House Permits (WA)	April	Thousands	53.4	47.5	(5.9)	44.6	59.6
Case-Shiller Seattle Area Home Prices	March	Index	300.0	315.3	15.3	273.8	302.7
Inflation (CPI-W)							
National	May	% Change	4.7	5.6	0.9	1.2	3.4
Seattle	April	% Change	1.7	3.7	2.0	1.9	2.7
Car Sales							
New Vehicle Registrations	May	Thousands	27.0	25.5	(1.5)	19.4	24.6

The **Consumer Confidence Index**<sup>1</sup> decreased marginally from 117.5 to 117.2 between April and May, a 0.3-point decrease directly following a 12.7-point surge in the previous month. This could represent retreating short-term optimism, a potential reflection of consumer concerns regarding rising inflation rates and decreasing governmental support. However, overall confidence seems to be stable and resilient as vaccination rates continue to increase and the economy moves toward reopening fully.

The national **Unemployment Rate** saw a 0.3 percentage point decrease in the past month, from 6.1 percent in April to 5.8 percent in May. Similarly, Washington State's unemployment also decreased from 6.4 percent in February to 6.3 percent in March. In contrast, King County's unemployment rate increased from 5.4 to 5.5 percent (February-March), and Kirkland's increased from 4.4 to 4.8 percent (February-March).

**New Housing Permits** in Washington State decreased 11 percent from 53,400 in March to 47,500 in April. Despite this, the 2021 yearly average of 59,600 remains well above the 2020 average of 44,600 due to increases in the early months of 2021. The **Case-Shiller Home Price Index** saw another increase of 15.3 points in March to 315.3, reflecting a continually strong local housing market despite the pandemic.

**Inflation**, as measured by the CPI-W in the U.S. increased in May to 5.6 percent from 4.7 percent in April. For the Seattle-Tacoma-Bellevue region, the CPI-W increased from 1.7 percent in February to 3.7 percent in April. The CPI-W is reported as the percentage change over the last 12 months so inflation will likely remain higher in 2021 as a result of falling prices in 2020 during the impacts of the first wave of COVID-19 on the national and regional economy. Additionally, the effects of recent federal stimulus and reopening of the economy as vaccines become widely administered despite supply bottlenecks in some sectors may contribute to further inflation. As described in the graph from the White House Council of Economic Advisors below, much of the inflation<sup>2</sup> is driven by increases in the prices of vehicles and travel, where a sudden return of demand is outpacing supply restricted by the pandemic.

### Contributions to Monthly Core CPI Inflation

Percentage points, monthly rate



Source: BLS, CEA analysis.

**New Vehicle Registration** in Washington State increased sharply from 24,000 in March to 27,000 in April, before decreasing to 25,500 in May. The 2021 yearly average remains 5,200 above the 2020 average.

<sup>1</sup> The Consumer Confidence Index transitioned to an online survey this year and all monthly indices have been restated and updated with the new methodology from January to May 2021.

<sup>2</sup> Inflation measure in the graph is Core CPI, which removes energy and food prices due to their increased volatility. The City of Kirkland uses the CPI-W, which is the Consumer Price Index for Urban Wage Earners and Clerical Workers



## CITY OF KIRKLAND

Department of Finance & Administration

123 Fifth Avenue, Kirkland, WA 98033 425.587.3100

[www.kirklandwa.gov](http://www.kirklandwa.gov)

### MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Jay Gewin, Purchasing Agent

**Date:** June 22, 2021

**Subject:** REPORT ON PROCUREMENT ACTIVITIES FOR COUNCIL MEETING OF July 6, 2021.

This report is provided to apprise the Council of recent and upcoming procurement activities where the cost is estimated or known to be in excess of \$50,000. The "Process" column on the table indicates the process being used to determine the award of the contract.

The City's major procurement activities initiated since the last report dated May 18, 2021 are as follows:

	Project/Purchase	Process	Estimate/Price	Status
1.	3 Replacement large mowers for Public Works	Cooperative Purchase	\$225,150.73	Purchase orders awarded to Western Equipment of Los Angeles, CA.
2.	Virtual Infrastructure Improvements to house the new Security Incident and Event Management Tool	Cooperative Purchase	\$57,422.48	Purchase order awarded to Dell Marketing, LP of Chicago, IL
3.	David E. Brink Park Shoreline Renovation	Invitation for Bids	\$1,151,831.34	Contract awarded to Wyser Construction Co. of Snohomish, WA
4.	2021 Street Overlay Project	Invitation for Bids	\$1,164,697.70	Contract awarded to Watson Asphalt Paving Co. of Redmond, WA
5.	2021 Slurry Seal Project	Invitation for Bids	\$335,335	Contract awarded to Intermountain Slurry Seal of Reno, NV
6.	Software and professional services for IT's new Security Incident and Event Management Tool and an IT Operations Management Platform	Request for Proposals	\$117,482.23	Contract awarded to Xiologix LLC of Tualatin, OR

## ORDINANCE O-4762

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO MOORAGE COMPLIANCE AND AMENDING SECTION 14.36.070 OF THE KIRKLAND MUNICIPAL CODE.

WHEREAS, Kirkland Municipal Code ("KMC") Section 14.36.070 relates to moorage compliance at City moorage facilities; and

WHEREAS, Parks and Community Services recommend that KMC Section 14.36.070 be amended to increase moorage fees as the current moorage fees have been increasingly ineffective at preventing visitors to the Kirkland Marina from violating the City's moorage rules and regulations; and

WHEREAS, the current sixty-six dollar fine for non-payment is ineffective at preventing visitors to the Kirkland Marina from violating the City's moorage rules and regulations and not consistent with similar fines for moorage violations that are set at one hundred fifty dollars; and

WHEREAS, moorage fines are a non-traffic civil violation that does not go on an individual's record, decreasing the incentive for proper and timely payment of moorage.

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

Section 1. Kirkland Municipal Code Section 14.36.070 is amended to read as follows:

**14.36.070 Compliance required.**

(a) All persons using city moorage facilities shall abide by all applicable ordinances of the city and any rules and regulations adopted by the parks director.

(b) The following violations of this chapter shall be civil infractions:

(1) Moorage without registering or without paying the established fee; continuing to moor without paying the established fee as it becomes due. ~~The civil penalty shall be sixty-six dollars.~~ Each calendar day on which a failure to pay the moorage fees occurs shall constitute a separate civil infraction. The following penalties shall be assessed for such violations:

(A) No previous violation of the moorage provisions of this chapter within the preceding 30 days: \$150.00

(B) A second violation of the moorage provisions of this chapter within 30 days of a prior violation: \$200.00

(C) Each subsequent violation (i.e. two or more) of the moorage provisions of this chapter within 30 days of an initial violation: \$250.00

(2) Moorage in a restricted or prohibited area. The civil penalty shall be one hundred fifty dollars. Each calendar day on which a watercraft is moored in a restricted or prohibited area shall constitute a separate civil infraction.

(3) Tying together or rafting of watercraft at a city moorage facility. The civil penalty shall be one hundred fifty dollars. Each of the watercraft involved shall be subject to issuance of a separate civil infraction.

(c) Unless otherwise specified, any other violation of this chapter is a civil infraction, punishable by a fine of one hundred fifty dollars per violation.

(d) The parks director shall designate an employee or contractor who shall be responsible for issuing civil infractions pursuant to this chapter. The employee or contractor designated by the parks director shall receive any necessary authorization and training from the Kirkland police department with respect to issuance of civil infractions. Alternatively, the parks director may make arrangements with the Kirkland police department for police personnel to issue civil infractions under this chapter.

Section 2. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2021.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

\_\_\_\_\_  
Kathi Anderson, City Clerk

Approved as to Form:

\_\_\_\_\_  
Kevin Raymond, City Attorney



**CITY OF KIRKLAND**  
**Department of Parks & Community Services**  
123 5<sup>th</sup> Avenue, Kirkland, WA 98033 425.587.3300  
[www.kirklandwa.gov](http://www.kirklandwa.gov)

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**To:** Kurt Triplett, City Manager

**From:** Lynn Zwaagstra, Parks and Community Services Director  
John Lloyd, Parks and Community Services Deputy Director  
Kevin Ball, Parks and Community Services Program Coordinator

**Date:** June 24, 2021

**Subject:** UPDATE TO MUNICIPAL CODE 14.36.070 ON MARINA MOORAGE  
INFRACTIONS

**RECOMMENDATION:**

That the City Council approves changes to the Kirkland Municipal Code (KMC) increasing fines associated with moorage violations as defined in [KMC 14.36.070 \(b\) \(1\)](#) from the current rate of \$66.00 to the proposed rate of \$150.00 to be consistent with other moorage violations. Further proposed changes to the code would escalate the fines to \$200.00 for the second violation within 30 days of an initial violation and \$250.00 thereafter for each additional violation within 30 days of an initial violation.

**BACKGROUND:**

The past several years have seen a significant increase in moorage violations at the Kirkland Marina. As the size of boats utilizing the Marina has increased over time, the \$66.00 fine is having a smaller impact on violations. The current citation is slightly more than a day's moorage for the average boat and considerably less than two or more days of moorage. Additionally, the citations have no impact on a violator's record as it is a non-traffic civil violation. All the above has resulted in more and more boaters choosing to comply less with paying moorage fees.

So far in 2021, the City has issued over 69 moorage citations – triple what was issued at this time last year. Since April, six boats alone have compiled 25 moorage citations. Not only does the non-compliance have an impact on moorage revenues, it also wastes staff time and resources to continually cite the same boats repeatedly. Since the beginning of 2020, 50 out of 236 citations have been reported as being sent to collections for non-payment to the court. Six of those citations are attributed to a boat that continues to moor at the marina without paying.

**OPPORTUNITIES:**

Marina Park and the associated docks are one of the Kirkland community's most used and visited assets in the entire system. When the summer weather appears, it can almost become an awe-inspiring number of people enjoying the park and the amenities offered. On the busiest summer days, when the dock reaches capacity, boaters circle the Marina until a slip becomes available. Park Ranger and Harbormaster staff put forth significant effort to educate and enforce the rules and regulations that are in place for reasons of safety, damage, access and

equity for all who use the public piers. For that reason, it is imperative to ensure the fines defined in the KMC are an appropriate deterrent from abuse. The current fines are no longer a deterrence as some boaters would rather take their chances of being cited, rather than paying moorage fees. Staff recommend the fine defined in KMC 14.36.070 (b) (1) be increased to \$150.00 to serve as a stronger deterrent and to be consistent with \$150.00 fines in the KMC for similar types of moorage violations. Additionally, staff recommend adding an escalating fee for subsequent violations in a 30-day period to deter repeated violations. The new code would read as follows:

Moorage without registering or without paying the established fee; continuing to moor without paying the established fee as it becomes due. Each calendar day on which a failure to pay the moorage fees occurs shall constitute a separate civil infraction. The following penalties shall be assessed for such violations:

- a. No previous violation of the moorage provisions of this chapter with the preceding 30 days: \$150.00
- b. A second violation of the moorage provisions of this chapter within 30 days of a prior violation: \$200.00
- c. Each subsequent violation (i.e. two or more) of the moorage provisions of this chapter within 30 days of an initial violation: \$250.00

The Marina dock has a limited number of mooring slips available to Kirkland and the surrounding boating communities. When boaters violate the moorage regulations they are unfairly limiting and manipulating the availability of slips to those boaters who are desiring to enjoy the dock, park amenities and downtown offerings. The number of violations has been significantly increasing resulting in an unprecedented number of citations and demands to vacate. An increase in the amount of the fine would give incentive for violators to comply with the City's moorage rules.

### *Three-Hour Free Moorage*

A related issue that creates significant complications for Marina moorage and receipt management is the current policy of allowing three free hours of moorage. This policy was requested by previous Councils with the goal of providing boaters time to use park amenities and/or patronize downtown food services and retail shops. Unfortunately, the free time is most often used to extend current moorage or to avoid payment of moorage altogether. Most three-hour violators become familiar to staff and are regular boats that are in dock for extended-overnight moorage or boats/jet skies who moor for a significant amount of time with no intention to stay overnight. Staff is only raising awareness of this policy at this point. Potential options to consider are charging fees for the first three hours or potentially discontinuing the three-hour time slots altogether as the policy is not currently meeting desired outcomes.

### **NEXT STEPS:**

The Parks & Community Services Department will take a holistic view of the full Chapter in conjunction with other municipal codes to bring forward a comprehensive code update to City Council in the future. Additionally, resources allocated as a part of the Summer Action Plan will be used to hire additional Harbormaster staff to help with education, enforcement, compliance, and follow up. We are hopeful that the fee increase associated with this initial code update will

allow the boating community to enjoy the marina docks and park amenities without having the experience lessened by those who continue to violate the city's codes and ordinances.

**Attachment:** Ordinance



## RESOLUTION R-5484

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO UNDERTAKE NEGOTIATIONS RELATED TO THE POTENTIAL ACQUISITION OF REAL PROPERTY FOR AFFORDABLE HOUSING PURPOSES.

1 WHEREAS, certain real property known as the "Village  
2 Plaza of Kirkland," located at 11825 100<sup>th</sup> Avenue NE in Kirkland  
3 ("Property"), has been publicly listed for sale by its owner; and  
4

5 WHEREAS, one policy priority of the City Council is to  
6 increase the amount of affordable housing of all types in Kirkland,  
7 in part by helping provide access to housing and by encouraging  
8 the construction and preservation of housing stock that meets a  
9 diverse range of incomes and needs; and  
10

11 WHEREAS, such affordable housing purposes could  
12 include, but would not be limited to, the acquisition of existing  
13 housing stock for low-income and moderate-income housing,  
14 transitional workforce housing, or temporary housing for  
15 individuals experiencing homelessness; and  
16

17 WHEREAS, the City of Kirkland ("City") wishes to explore  
18 the possibility of acquiring the Property for affordable housing  
19 public purposes of some kind; and  
20

21 WHEREAS, in order to fully explore such potential  
22 acquisition, it would be necessary for the City Manager to  
23 promptly undertake negotiations with the owner of the Property  
24 or such owner's representative; and  
25

26 WHEREAS, such negotiations, if successful, would result in  
27 a proposed purchase and sale agreement related to the Property  
28 that would be brought to the City Council for its formal approval  
29 prior to execution by the City.  
30

31 NOW, THEREFORE, be it resolved by the City Council of the  
32 City of Kirkland as follows:  
33

34 Section 1. The City Manager is hereby authorized to  
35 undertake negotiations with the owner or owner representative of  
36 the "Village Plaza of Kirkland" located at 18825 100<sup>th</sup> Avenue NE  
37 in Kirkland related to the potential acquisition of such Property by  
38 the City for affordable housing purposes; provided, however, that  
39 in the event such negotiations are successful a purchase and sale  
40 agreement related to the Property will be subject to approval by  
41 the City Council prior to its execution by the City.

42           Passed by majority vote of the Kirkland City Council in open  
43 meeting on the \_\_\_\_ day of \_\_\_\_\_, 2021.  
44

45           Signed in authentication thereof this \_\_\_\_ day of  
46 \_\_\_\_\_, 2021.

\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

\_\_\_\_\_  
Kathi Anderson, City Clerk

**CITY OF KIRKLAND****City Manager's Office****123 Fifth Avenue, Kirkland, WA 98033 425.587.3001****[www.kirklandwa.gov](http://www.kirklandwa.gov)**

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**MEMORANDUM**

**To:** City Council

**From:** Kurt Triplett, City Manager

**Date:** June 29, 2021

**Subject:** POTENTIAL PROPERTY ACQUISITION

**RECOMMENDATION:**

That the City Council approves a resolution authorizing the City Manager to enter negotiations to acquire The Village Plaza of Kirkland, a six-unit apartment complex at 11825 100<sup>th</sup> AVE NE near Juanita Village. (See Plaza for sale description flyer as Attachment A)

**BACKGROUND DISCUSSION:**

One clear priority of the City Council is to increase the amount of affordable housing of all types in Kirkland. In 2021 the Council revised the housing goal to "Attainable Housing: To provide access to housing and to encourage the construction and preservation of housing stock that meet a diverse range of incomes and needs." The Council also included accomplishing more affordable housing in multiple ways as one of the eleven priorities in the adopted 2021-2022 City Work Program.

Throughout the pandemic in 2020 and 2021, Kirkland (along with the region and the state) has grappled with the challenge of the increase in those experiencing homelessness due to the impact of COVID-19. Temporary solutions have included new shelter capacity and use of hotel vouchers while housing and services are identified. Permanent supportive housing is a longer-term solution that is also part of the City Work Program.

At the May 18, 2021 Council meeting, the Council reviewed the new community responder program and authorized staff to develop job descriptions and recruit nationally for mental health professionals and social workers. The high cost of housing in Kirkland is a potential impediment to qualified candidates coming from other areas.

At the June 1, 2021 Council meeting, the Council deliberated whether to relocate the historic Snyder-Moody House to the southeast corner of the Wester Lot to be converted to a potential duplex or triplex and retained as affordable housing. Ultimately, the Council concluded that the overall cost per unit of a relocated Snyder-Moody house was too high. The Council also concluded that the opportunity to use the publicly owned land should result in more units such as a four-plex or six-plex on the same space.

The Village Plaza came on the market for sale around the same time these issues were all being evaluated by staff and discussed by the Council. Acquiring the complex could be helpful for any of these City initiatives.

The Village Plaza includes five two-bedroom one-bathroom apartments and a single one-bedroom one-bath apartment. Two-bedroom units are desirable but relative scarce commodities in the affordable housing inventory. Most new multi-family affordable housing projects produce predominantly studio and one-bedroom units. The Village Plaza is also within a 10-minute neighborhood, located within walking distance to Metro's frequent Route 255 transit service, Juanita Village and Juanita Beach Park.

If The Village Plaza is acquired, staff do not yet have a recommendation as to the best public use of the complex. There are several options that could be considered. The complex could simply be added to the affordable housing inventory and transferred to a housing provider such as the King County Housing Authority, Friends of Youth, or Attain Housing. The complex could become transitional workforce housing for employees joining Kirkland from out of the region or the state. The complex could also serve as emergency housing for those experiencing homelessness. Each of these options has operational and financial complexities that have not yet been defined or evaluated.

Staff also have not yet identified a recommended permanent funding strategy for acquiring the complex. Staff is recommending that the initial purchase occur through an interfund loan which must be repaid within three years with a modest amount of interest. During the three-year period staff would develop a final funding plan to repay the loan. Financing options could include funding from federal and state sources, money through A Regional Coalition for Housing (ARCH), utilizing City REET reserves dedicated to affordable housing, councilmanic debt with repayment from rent, or a combination of all of the above.

### **Council Direction Needed**

While there are still many questions to be answered, the opportunity to get a versatile, well-located six-unit complex such as The Village Plaza is rare. If the complex is acquired and the City is unable to figure out an appropriate use or funding source, the option to sell the complex back to the private market is always available. Therefore, staff is seeking approval of the resolution allowing the City Manager to enter negotiations to purchase the property at an appropriate price. A final purchase and sale agreement would be brought back to the Council for approval. The complex was built in 1967, and so given its age, any purchase and sale agreement would include appropriate due diligence contingencies to ensure any potential issues are identified and addressed prior to a final purchase.

Attachment A: The Village Plaza of Kirkland "For Sale" Flyer



## CITY OF KIRKLAND

### Department of Public Works

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

[www.kirklandwa.gov](http://www.kirklandwa.gov)

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#### MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Julie Underwood, Director of Public Works  
Joel Pfundt, Transportation Manager  
Kimberly Scrivner, Transportation Planner

**Date:** June 30, 2021

**Subject:** EASTRAIL REGIONAL ADVISORY COUNCIL DRAFT MEMORANDUM OF UNDERSTANDING WITH EASTRAIL PARTNERS

#### **RECOMMENDATION:**

It is recommended that the Council receive an update about a draft memorandum of understanding (MOU) between the Eastrail Regional Advisory Council and the Eastrail Partners, and to discuss potential language amendments, if any. No formal action is requested at this time.

#### **BACKGROUND DISCUSSION:**

**Eastrail:** The [Eastrail](#) is the 42-mile multiuse corridor that will connect the Eastside between Renton and Snohomish County, as well as a spur to Redmond, along a former BNSF railway segment. Currently, [13 miles of the Eastrail are open](#), including 5.75 miles within Kirkland known as the [Cross Kirkland Corridor](#).

**Eastrail Regional Advisory Council (RAC):** The [RAC](#) was formed in 2012, with the original members being those entities that had property rights or ownership interests along the corridor: Sound Transit, the cities of Kirkland and Redmond, Puget Sound Energy, and King County. In 2017, the RAC was expanded to include representatives from jurisdictions through which the Eastrail passes (the cities of Bellevue and Renton), new Eastrail owners (the City of Woodinville and Snohomish County), and the Eastside Greenway Alliance. These entities work together to maintain a collaborative, regional planning process for Eastrail. The owners' goal is to achieve connectivity and multiple uses, maximizing public benefit and enjoyment throughout the corridor both directly and indirectly.

Deputy Mayor Arnold is the Vice-Chair of the RAC.

**Eastrail Partners (EP):** The [EP](#) was formed in 2019 as a non-profit advocacy group focused on community engagement for the Eastrail and seeking public/private partnerships to advance further development of the corridor. The [Eastrail Partners Board of Directors](#) represent expertise in advocacy, land use, design, development, communications, and community on Lake Washington's Eastside.

The formation of the EP was originally funded by contributions from non-profits, the private sector, and RAC members. At the [October 2019 Council meeting](#), the Kirkland City Council approved up to \$10,000 as the City's funding contribution toward the establishment of the Eastrail Partners. This partnership then was facilitated by a service/funding agreement signed by Kirkland's Public Works Director. The total \$100,000 raised by this public/ private partnership was intended to fund the Eastrail Partners for one-year.

**2021 DRAFT MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN RAC MEMBERS AND EASTRAIL PARTNERS:**

EP, since beginning operations in early 2020, has been an integral and effective contributor to the advancement of the work to develop the corridor. This includes successful delivery of outcomes identified in the 2020 service agreement between the EP and RAC members. The EP will continue to focus its resources and efforts on high priority actions contributing to the development of the corridor and seek to ensure ongoing coordination with RAC members.

The proposed, non-binding MOU (see Attachment A) seeks to establish mutual understanding regarding the ongoing collaboration between the RAC members and Eastrail Partners. There is no additional funding contribution being asked of RAC members at this time and the suggested term of the MOU will be two years from the approval of all parties.

RAC members, including Deputy Mayor Arnold, will be discussing this draft MOU at the [July 19<sup>th</sup>, 2021 RAC](#) meeting. Deputy Mayor Arnold will convey any input from the City Council to the RAC on July 19<sup>th</sup>. The goal at this RAC meeting is to seek consensus on the language in the MOU. Once consensus on language has been reached, approval and execution of the MOU will be sought at a subsequent time.

Attachment A: Draft Memorandum of Understanding

FINAL REVIEW DRAFT 06/1/21

**MEMORANDUM OF UNDERSTANDING**  
**Regarding the Ongoing Partnership between the Eastrail Regional Advisory Council**  
**and Eastrail Partners**

This MEMORANDUM OF UNDERSTANDING is made by and among KING COUNTY, SNOHOMISH COUNTY, THE CITY OF BELLEVUE, THE CITY OF KIRKLAND, THE CITY OF REDMOND, THE CITY OF RENTON, THE CITY OF WOODINVILLE, A CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (SOUND TRANSIT), PUGET SOUND ENERGY (PSE), THE EASTSIDE GREENWAY ALLIANCE (EGA), and EASTRAIL PARTNERS (collectively, the “Parties”). This MOU sets forth the Parties’ mutual understanding regarding the ongoing collaboration between the Eastrail Regional Advisory Council and Eastrail Partners.

**RECITALS**

**WHEREAS**, King County, Snohomish County, the City of Bellevue, the City of Kirkland, the City of Redmond, the City of Renton, the City of Woodinville, a Central Puget Sound Regional Transit Authority (Sound Transit), Puget Sound Energy (PSE), and the Eastside Greenway Alliance are the members of the Eastrail Regional Advisory Council (RAC); and

**WHEREAS**, Eastrail Partners (EP) was formed at the recommendation of the Eastside Rail Corridor Funding Commission and with the support/endorsement of by agreement of the RAC members to play a unique and valuable role in the development of the Eastrail corridor by fostering, increasing, and sustaining private sector, governmental, and community support for actions to implement the RAC vision for the corridor; and

**WHEREAS**, the RAC members and EP are working closely together to develop a 42-mile multiple-use corridor in east King and Snohomish counties, with connected and coincident segments commonly referred to as the Eastrail, Centennial Trail South, Cross Kirkland Corridor, and Redmond Central Connector and with its northern terminus located in the City of Snohomish, WA and its southern terminus located in the Cities of Renton, WA and Redmond, WA, respectively; and

**WHEREAS**, EP, since beginning operations in early 2020, has been an integral and effective contributor to the advancement of the work to develop the corridor, including the successful delivery of outcomes identified in the 2020 service agreement between the RAC and EP and cost shared by RAC members; and

**WHEREAS**, EP will continue to focus its resources and efforts on high priority actions contributing to the development of the corridor; and

**WHEREAS**, the RAC and EP seek to ensure ongoing close alignment and coordination in their respective actions contributing to the development of the corridor.

**NOW THEREFORE**, the Parties have reached the following understanding:

**Section 1: Ongoing Collaboration**

EP will continue to help shape the agenda of and participate in the quarterly RAC meetings and the regular meetings of the RAC Principals Staff Team, as means to ensure ongoing alignment of efforts

supporting high priorities. Additional contact between RAC member or staff and EP board members and staff is strongly encouraged as needed to support effective collaboration.

## **Section 2: Priorities for Action between EP and the RAC**

The subject partnership between EP and the RAC's will primarily focus on the work areas noted below.

Additional areas of focus can be added as capacity allows to address new opportunities to advance the development of the Eastrail corridor.

- EP will continue to play a unifying role as primary point of contact on coordinated approaches for state and federal governmental engagement and funding opportunities, as a compliment to and in association with legislative agenda actions by individual RAC member entities.
- The RAC will partner with EP to bring the RAC's support, and/or that of specific RAC members, to advocacy opportunities.
- EP will build and maintain relationships with Eastside-focused businesses, including possible facilitation of capital project delivery.
- EP, the RAC, and the Principals Staff Team will partner to continue developing and implementing a communications framework for shared work to ensure:
  - good internal communications between staff, RAC members and EP, including communicating proactively with EP on project funding and status, and
  - good external communications on project status, trail closures and openings, and funding.
- EP, the RAC, and the Principals Staff Team will collaborate on the development, implementation, and/or support of community-activation events.
- By mutual agreement, the parties can explore possible future EP service agreements.

## **Section 3: Term of this MOU**

This MOU will be in effect for two years from the approval of the parties, as determined by the last date of signature among the Parties. This agreement can be amended by the mutual agreement of the Parties. This MOU can be renewed by the mutual agreement of the Parties.

[Signatures]





# LEGISLATIVE REQUEST MEMORANDUM

*Request new legislation, or request staff resources be allocated to issues not included in current budget, City Work Program, or department work plans.*

**Title:** Busking in Parks, Rights-of-Way, and Commercial Areas

**Date:** 7/1/2021

**Requesting Councilmember:** Toby Nixon

**Department(s) Assigned:** PCS

## REQUEST SUMMARY

*A clear, concise description of the issue(s) to be addressed, and why the City should be involved.*

This LRM was initially scheduled for the June 15, 2021 City Council meeting but was deferred to July.

Recently there have been several complaints about buskers in parks. Complaints have come from park users and buskers alike. Park users have complained about the noise disturbing them while visiting the park, while buskers have complained the lack of equity in current code as it relates to sound amplification. This has led to conflicts between buskers about who has the right to play music in a given space, resulting in calls to PD and Parks and Community Services.

Existing codes/laws would need to be evaluated/updated to address these concerns and subsequent processes/procedures would need to be developed to manage any potential changes. [KMC 11.80.90](#), does not allow anyone to sell, solicit, or peddle in parks without a written permit from the Director and also restricts the use of any loudspeaker or sound amplification devices in any park without prior permission. [KMC 11.84a.070](#) states sound from portable audio equipment operated at a volume so as to be audible greater than fifty feet from the source, and if not operated upon the property of the operator to be considered a public disturbance.

Additional complaints have been received about busking in commercial areas/rights-of-way (ROW) like Park Lane. These areas would fall under [KMC 11.84a.070](#), but the language in the code needs to be evaluated to ensure it covers busking activities in public areas.

There is no formal process to obtain a permit to allow this activity in parks or in the ROW. The following proposal addresses what it would take to develop and implement a formal process to permit busking activities.

## BENEFITS

*Preliminary potential benefits of the proposal.*

Developing and implementing a formal process to allow/permit busking activities could have several benefits including, but not limited to the following:

- Defined structure to allow busking
  - Could include scheduling process to avoid conflict
  - Allowable times could be promoted to inform park users when buskers may be present
  - Could define locations that busking would be allowed
- Updated KMC could make enforcement easier
- Creates more opportunity for busking (if amplification is allowed)
- Reduce conflict by more clearly defining what is/is not allowed
- Potential revenue source through business license fees, permit fees, or fines for violation of the codes (depending on the final outcome/decisions)

## IMPACTS

*Preliminary potential impacts of the proposal.*

Development of a formal process could be seen as overbearing to buskers. If fees are charged, this could “price-out” some people from being able to legally busk in the city. Additionally, some people dislike when people play music in parks or other public areas and would prefer this not be an allowable activity anywhere. Updating codes to allow amplification may result in more busking activities. Ongoing permitting/scheduling/enforcement would take additional staff time.

## COUNCIL VISION AND GOALS

*Check all that apply.*

X	Inclusive and Equitable Community		Attainable Housing
X	Vibrant Neighborhoods		Financial Stability
X	Community Safety		Sustainable Environment
	Supportive Human Services	X	Thriving Economy
	Balanced Transportation		Dependable Infrastructure
X	Abundant Parks, Open Spaces, and Recreational Services		

## EQUITY

*Preliminary discussion on how the proposal may impact diversity, equity, and inclusion.*

Current codes do not allow any amplification in parks. Some instruments used by buskers, such as keyboards, require amplification. This results in an inequity depending on which instrument a given busker plays. Depending on the final recommendation, there could be fees associated with a formalized policy. Charging buskers for a business license or permit could limit this activity to those who can afford the permit fees.

## STAKEHOLDERS / OUTREACH

*Preliminary potential stakeholders impacted and outreach to be considered.*

- Public Outreach Campaign to determine level of support for busking
  - Park Board
  - Kirkland Alliance of Neighborhoods (KAN), Neighborhood Associations
  - Commercial Area business owners
  - Tourism Development Committee
  - Social Media
  - Online Survey
- Several city departments would be considered stakeholders
  - Police
    - Enforcement
  - Parks and Community Services
    - Development and administration of permit process
    - Identify locations where busking would be allowed
    - Research neighboring cities
      - Current codes
      - Is permit or business license required of buskers?
      - Is amplification allowed?
      - Scheduling/location restrictions
  - Finance
    - Evaluate business license requirements
  - Public Works (ROW)
    - Busking on city streets/ROW not in a park
  - City Manager’s Office
    - Commercial areas such as Park Lane – discuss impacts/concerns
  - City Attorney’s Office

- Review any code changes
- Determine legality of any regulations

## RESOURCES AND BUDGET

*Preliminary potential staff resources needed and whether current staff and budget authority could accommodate the request.*

It will take PCS staff approximately 140-200 hours to conduct research of neighboring cities, draft proposed policy/procedures, and to gather feedback from other city departments. It will take 1-2 months' time to complete the public outreach recommended. The process could go faster if outreach is limited or not utilized.

Based on other PCS and CMO projects/current workload, this could be started in July/August 2021.

## OPTIONS

*Potential options or alternatives that could be evaluated.*

Status quo – no change, no impact on operations

- This would require the least staff time, but still leaves conflicts to be resolved by PCS/KPD
- Technically, busking would remain a violation of the KMC since the current code disallows soliciting or peddling in parks

Update [KMC 11.80.90](#) to allow amplification as long as it remains under levels defined in [KMC 11.84a.070](#)

- Technically, busking would remain a violation of the KMC if the only change is to allow amplification since the current code disallows soliciting or peddling in parks

Disallow busking in parks

- Add the word "busk" to [KMC.80.090](#) to read, "It is unlawful to sell, solicit, **busk**, or peddle in any park without first obtaining a written permit from the director."

## ADDITIONAL CONSIDERATIONS

*Check all that apply.*

X	Legal analysis required
	Fiscal analysis required
X	Legislative change required
	State or federal change required
X	Other (please explain):

Various sections of the KMC would need to be modified/updated if changes in status quo are desired.

[KMC 7.02](#)  
[KMC 11.80.90](#)  
[KMC 11.84a.070](#)  
[KZC 115.95](#)

▪ Department Director responsible for acquiring Finance and Legal approval before submitting to City Manager.

APPROVALS	INITIAL	DATE
Finance Department		
Legal Department		
Department Director		
Submit to City Manager		