

CITY OF KIRKLAND
Planning and Building Department
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Adam Weinstein, AICP, Planning and Building Director
Jeremy McMahan, Planning and Building Deputy Director
Katie Hogan, Urban Forester

Date: March 3, 2022

Subject: DRAFT CODE AMENDMENTS – PART 5 (**FINAL DRAFT**), KIRKLAND ZONING CODE CHAPTER 95, TREE MANAGEMENT AND REQUIRED LANDSCAPING; FILE NUMBER CAM18-00408

I. RECOMMENDATION:

It is recommended that City Council review the final draft of the consolidated amendments to Kirkland Zoning Code Chapter 95 (KZC 95), included in the attached ordinance as Exhibit A. If the Council is ready for final adoption, staff has prepared an ordinance for consideration.

II. BACKGROUND INFORMATION:

Since resuming review of the proposed KZC 95 Tree Code amendments on November 16 (Part 1), staff has now presented Council with Parts 1, 2, 3, and 4 of the proposed amendments over the course of four City Council meetings. At the February 15 City Council meeting, staff presented Council with Part 4, a consolidated draft code including additional revisions requested by Council during the January 4 and February 1 City Council meetings. Following Council's review, staff has returned with additional revisions based on Council direction from the February 15 meeting and a final draft of the proposed code.

Additional items requested by Council that are addressed in this memo include options for homeowner removal of the last remaining trees, a high-level response to key points in the Master Builders Association of King and Snohomish Counties (MBAKS) letter dated February 1, civil penalty fine data, information on potential impacts to construction feasibility from the proposed variations to development standards, and additional miscellaneous minor revisions to code language as requested by Council.

III. DEVELOPMENT OF THE AMENDED TREE CODE

As the City nears adoption of amendments to Kirkland's tree code (KZC 95), staff thought it might be helpful to provide a brief recap of the groundwork. KZC 95 establishes a permit process and standards for the protection and replacement of trees. Tree ordinances are a vital tool for cities to balance urban growth while simultaneously fostering a sustainable community. While tree regulations can add cost and plan review complexity to the development process, these regulations have certainly not inhibited development in Kirkland where growth continues to rapidly occur. Consider that since the tree code amendment project began in June of 2018, the City has approved nearly 900 new single-family development permits and over 1,400 tree removal permits.

Apart from minor code amendments, KZC 95 was last updated in 2010. Since then, goals and policies in Kirkland's Comprehensive Plan¹ were revised and an Urban Forestry Strategic Management Plan² was created to maintain a healthy, sustainable urban forest in Kirkland. City Council initiated revisions to KZC 95 in 2018 to support these goals, to address issues and challenges that have arisen since 2010, and to improve the code so that it is more effective and practical to use. Data collected during the 2018 Urban Tree Canopy Cover Assessment³ also indicated the need to review the regulations. That assessment revealed that the City's Urban Tree Cover (UTC) had fallen from 41 to 38 percent between 2010 and 2017, with the majority of the canopy loss (253 acres) occurring in low-density residential areas. Additionally, updating Kirkland's tree code is an important project identified in the 2018 (and subsequent) Planning Work Programs, the 2014-2019⁴ and 2021-2026⁵ Citywide Urban Forest Work Plan, and more recently, in Kirkland's Sustainability Master Plan⁶.

Furthermore, updates to Best Management Practices and Industry Standards in arboricultural sciences, along with ongoing discussions between City Staff and guidance from the Planning Commission (PC)/Houghton Community Council (HCC), local developers, neighborhood groups, and the public, identified additional issues with the existing tree code.

In June 2018, discussions on these issues and potential tree code amendments commenced with continued input from the PC and HCC, City staff, stakeholder groups and the public. At that time, staff was directed to obtain additional feedback on potential code amendments through collaboration between the Finn Hill Neighborhood Alliance (FHNA) and MBAKS.

Following a series of study sessions, a joint public hearing with the PC and HCC was held on [November 5, 2019](#) to obtain community feedback on the draft code. The HCC made their recommendation to the PC and the PC then delivered recommendations for amendments to the tree code to City Council at the [January 21, 2020](#) study session for City Council consideration. Both recommendations can be reviewed in the meeting packet.

¹ 2015 [Kirkland's Comprehensive Plan](#)

² 2013 [Urban Forestry Strategic Management Plan](#), City of Kirkland

³ 2018 [Urban Tree Canopy Cover Assessment](#), City of Kirkland

⁴ [Citywide Urban Forest Work Plan 2014-2019](#), Objective 4.3 Update Tree Codes, page 5.

⁵ [Citywide Urban Forest Work Plan 2021-2026](#)

⁶ [Sustainability Master Plan](#), Natural Environment + Ecosystems Focus Area, page 40.

After the City Council began its review of the draft code in early 2020, the project was put on hold until further notice due to the COVID pandemic response. In the interim, the City Council has taken several steps to improve the management of public and private trees, including:

- Adopting new rules for the enforcement of the current tree code, Kirkland Municipal Code 1.12.100, which went into effect in May 2020.
- Adopting the Urban Forestry 6-Year Work Program to guide staff on urban management priorities and initiatives.
- Approving two service packages for the City to improve inventories of public trees, establish planting priorities based on the inventory, and investigate a formal tree bank program to help mitigate canopy loss.
- Directing staff to conduct the Holmes Point Overlay Zone Street Design and Holmes Point Drive Corridor Study

City Council then resumed review of the draft tree code in [May 2021](#) and [July 2021](#), with a focus on the desired high-level policy outcomes that would shape the amendments. Based on this information, staff then prepared a draft KZC 95, derived from the PC draft code, that staff believes meets Council's desired outcome. Beginning on [November 16, 2021](#), staff began presenting City Council with a step-by-step overview of each proposed amendment. Since starting this review process, staff has presented Council with all code sections and associated amendments over the course of four City Council meetings. An overview of the tree code sections reviewed during these four meetings is outlined below:

November 16 (Part 1) – no impact/minor code amendments, including:

- 95.05 – Purpose and Intent
- 95.10 – Definitions
- 95.15 – Exempt Tree Removal Activities
- 95.20 – Public Tree – Pruning and Removal
- 95.21 – Private Property – Tree Pruning
- 95.32 – Tree and Soil Protection during Development Activity
- 95.40 – Required Landscaping Based on Zoning District
- 95.41 – Supplemental Plantings
- 95.42 – Land Use Buffer Requirements
- 95.43 – Outdoor Use, Activity, and Storage
- 95.45 – Perimeter Landscape Buffering for Driving and Parking Areas
- 95.46 – Modifications to Required Landscaping and Buffer Standards
- 95.47 – Nonconforming Landscape and Buffers
- 95.50 – Installation Standards for Required Plantings
- 95.52 – Prohibited Vegetation

January 4 (Part 2) – first round of moderate/major code amendments, with focus on private homeowner tree removals not associated with development:

- 95.23 – Landmark Trees – Mitigation Requirements
- 95.25 – Private Property – Tree Removal, Not Associated with Development Activity

February 1 (Part 3) – second round of moderate/major code amendments, with focus on development related tree protection standards:

- 95.30 – Tree Retention Associated with Development Activity
- 95.34 – Tree Replacement Standards Related to Development Activity

95.55 – Enforcement and Penalties

February 15 (Part 4) – review of additional amendments based on City Council feedback:

- 95.44 – Internal Parking Lot Landscaping Requirements
- 95.51 – Tree and Landscape Maintenance Requirements
- 95.57 – City Forestry Account

The City Council provided staff with additional direction at the February 15 meeting and staff has addressed the direction in this staff memo and in the final draft of the attached KZC 95.

Additional background information on the evolution of KZC 95 can be found through the links below:

Date/Link		Meeting Topic
June 28, 2018	PC	Understanding KZC 95, Tree Canopy Cover 101
July 12, 2018	PC	Preliminary project scope
Aug 9, 2018	PC	2018 field study findings on KZC 95 efficacy
Aug 27, 2018	HCC	Briefing on PC progress
Sept 13, 2018	PC	Preliminary code changes with low-level policy impacts
Sept 27, 2018	PC	Preliminary code changes with moderate policy impacts
Nov 8, 2018(A) Nov 8, 2018(B)	PC	A) Review 2018 Tree Canopy Assessment B) Review 1st draft KZC 95 , options, initial public feedback
Nov 20, 2018	CC	Briefing on PC progress, 1st draft KZC 95, staff recommendations, options, emerging issues
Nov 26, 2018	PC- HCC	Joint review of major code amendments, preliminary public feedback. Discuss canopy cover vs. tree density credits.
Feb 14, 2019	PC	Review stakeholder position on remaining code issues, review 2nd draft KZC 95 , consider staff recommendations and other city tree codes
Feb 25, 2019	HCC	Briefing on PC progress, status of code amendments
Apr 25, 2019	PC- HCC	Joint briefing on status of code amendments
May 23, 2019	PC	Review stakeholder's 2-tiered approach and resulting effects of proposed codes, study tree trunk diameter (DBH) data, provide direction on code
May 30, 2019	HCC	Briefing on May 23 PC meeting topics
July 11, 2019	PC	Review 3rd draft KZC 95 , 6 remaining key code issues, stakeholder feedback and other city tree codes, provide direction on code
Jul 22, 2019	HCC	Review 4th draft KZC 95 and the 6 remaining key code issues using the HCC's Guiding Principles, consider options, prepare for hearing
Oct 1, 2019	CC- PC	Review staff-stakeholder process and key code changes prior to hearing
Nov 5, 2019	PC- HCC	Public hearing, initial joint PC-HCC deliberations
Jan 21, 2020	CC	Review PC recommendations and focus on key issues of code amendments
Feb 4, 2020	CC	Review PC recommendations and discuss KZC 95.23
Feb 18, 2020	CC	Review PC recommendations and provide direction for staff for continued code amendments

May 18, 2021	CC	Discuss general policy direction and desired outcomes of the code amendment project
July 6, 2021	CC	Study session to review high-level policy questions to guide code amendments
Nov 16, 2021	CC	Resume City Council review of no impact/minor impact code amendments and confirm Council position on high-level policy to guide code amendments
Jan 4, 2022	CC	Resume City Council review of moderate/major impact code amendments, including review of KZC 95.23 – Landmark Tree Mitigation and 95.25 – Private Property - Tree Removals, Not Associated with Development Activity
Feb 1, 2022	CC	Resume City Council review of moderate/major code amendments, focusing on review of tree retention associated with development activity
Feb 15, 2022	CC	Resume City Council review of consolidated draft code

IV. ADDITIONAL AMENDMENTS AND RESPONSES TO COUNCIL’S PART 4 COMMENTS

A. Tree Removal Allowances for the Last Remaining Trees

At the February 1 City Council meeting, Council expressed the desire to provide homeowners with more flexibility to manage their trees and vegetation by providing the ability for homeowners to remove the last remaining trees on their property as long as the trees are robustly mitigated. In response to Council direction, staff returned to Council on February 15 to present Council with a draft code that would allow a departure for homeowners to remove their last remaining trees subject to permit review and a mitigation fee. This option required that homeowners submit a tree removal permit to remove healthy trees beyond the 12-month allowances, as well as pay a Tree Removal Fee in the amount equivalent to KMC 1.12.100 Civil Penalty Fines for each tree removed under this departure. Please see the [February 15 Staff Memo](#) for more information.

During the [February 15](#) meeting, individual Councilmember positions varied, but in overall the Council generally expressed disapproval of this option for the following primary reasons:

- 1) The proposed fee amount was too high and burdensome on property owners and/or
- 2) This proposal did not require homeowners to also replace trees that are removed

Based on this direction, staff has prepared three options for Council to consider that better align with both Council’s desired outcome and the City’s urban forestry goals. Staff recommends that the Council deliberate and decide by motion and vote on these options in the following order:

- 1) Does the majority of the Council support Option 1, which would retain existing requirements that prohibit the removal of the last remaining trees beyond the 12-month allowances?
If the Council supports Option 1, then no further action on Options 2 or 3 is necessary
- 2) Should Council reject Option 1 and wish to permit the removal of trees beyond the 12-month allowances, does the Council support Option 2 or Option 3 as appropriate mitigation?

All three options and the implementing code language are further described on the next pages.

The proposed draft code (Exhibit A) includes staff's preferred option (Option 1) which aligns with the Planning Commission's recommendation. Should Council fail to approve Option 1 by motion, the proposed code language for both Options 2 and 3 are outlined below and can be inserted into the draft code for final adoption on March 15.

Option 1 (preferred): Maintain existing code with the addition of the increased 12-month removal allowances based on property size as originally proposed at the [January 4](#) and [February 1](#) City Council meetings, and as recommended by the Planning Commission (Exhibit A – KZC 95.25.1).

Staff continues to recommend that Council consider retaining existing code language which includes tree regulations limiting the number of healthy trees a property owner can remove within any given 12-month period. While this option would continue to regulate private property tree removals, it allows more flexibility than the existing code by way of increasing the number of allowed removals based on property sizes, as well as more flexible Landmark Tree removals than the previous Planning Commission draft code. The concern is that introducing even more permissive tree removal allowances would be counterproductive to achieving City-wide canopy goals. Staff notes that similarly-sized municipalities throughout the Greater Seattle Region generally have prohibitions on removing the last remaining trees similar to our current code.

For ease of reference, the Exhibit 1 below includes an excerpt from the proposed draft code (Exhibit A) should Council support Option 1.

Exhibit 1. Code Language for Option 1 (KZC 95.25.1)

1. *Tree Removal Activity – Notification Required. Any private property owner of developed property may remove up to a specified number of regulated trees based on property size shown in Table 95.25.1 within a 12-month period with the submittal of a Tree Removal Notification Form pursuant to subsection (2) of this section. For any tree removal that is beyond what is allowed in this section, a Tree Removal Permit is required pursuant to subsection (3) of this section. The following activities do not require the submittal of a Tree Removal Permit:*
 - a. *The tree is not a Landmark Tree. Landmark Tree removals are regulated pursuant to subsection (4) of this section;*
 - b. *The tree removal does not result in less than the minimum number of regulated trees to remain on the subject property shown in Table 95.25.1. Trees that qualify as hazard or nuisance trees may be permitted for removal pursuant to subsection (6) of this section with approval of a tree removal permit and tree replacements based on the size of the removed trees shown in Table 95.25.2 below;*
 - c. *There is no active application for development activity for the subject property. Development activity within 12- or 24-months following tree removal may be subject to the limitations of subsection (5) of this section; and*
 - d. *All of the additional standards for tree removal and tree removal permits as described in subsections (3) through (10) of this section are met.*

Table 95.25.1 Regulated Tree Removal Allowances, No Permit Required

<i>Property Size</i>	<i>Maximum Allowance for Tree Removals per 12 Months</i>	<i>Minimum Number of Regulated Trees to Remain on Subject Property</i>
<i>Up to 10,000 sq. ft.</i>	<i>2</i>	<i>2</i>
<i>10,001 to 20,000 sq. ft.</i>	<i>3</i>	<i>3</i>
<i>20,001 sq. ft. or greater</i>	<i>4</i>	<i>4</i>

Table 95.25.2 Tree Replacement Standards for Property Owner Removal of the Last Remaining Trees

<i>Diameter of Removed Tree</i>	<i>Number of Replacement Trees Required</i>
<i>6 to 15 inches DBH</i>	<i>1</i>
<i>16 to 26 inches DBH</i>	<i>2</i>
<i>26 inches DBH or greater</i>	<i>3</i> <i>(see KZC 95.23)</i>

For example: A property owner of a 15,000 square foot lot with three (3) existing trees would like to remove a 25-inch DBH maple tree due to its meeting the hazard tree criteria. Because the maple tree is one of the minimum number of trees required on that size property, tree replacements are required. Because of the size of the removed tree, two (2) replacement trees would be required.

Option 2 (more restrictive): Should Council reject Option 1, Option 2 provides for higher Tree Removal Fees paired with lower Replacement Tree Requirements compared to Option 3.

Option 2 proposes a similar departure as presented to Council on February 15; however, it reduces the previously-recommended Tree Removal Fees by 25 percent and requires mitigation trees in addition to the fee. Mitigation tree ratios are assigned to each tree diameter category.

Because this option proposes a reduction of the Tree Removal Fee by 25 percent, adjustments to the Civil Penalty Fines for illegal tree removals (KMC 1.12.100), as previously presented at the February 15 meeting, is no longer recommended. The proposed fees and mitigation tree requirements can be found in the table below.

Table 1. Option 2 - Tree Removal Allowance Departure

<i>Diameter of Removed Tree (DBH)</i>	<i>Tree Removal Fee (reduced 25% from 2/15/22 proposal)</i>	<i>Required Replacement Tree Ratio</i>
6 to 10 inches	\$750	1:1
10 to 14 inches	\$1,500	1:1
14 to 18 inches	\$3,000	2:1
18 to 22 inches	\$4,500	2:1
22 to 26 inches	\$6,000	2:1

For example, a property owner requesting to remove one 8-inch tree and one 16-inch tree would be required to meet the following requirements:

- 1) Applicant shall submit a Tree Removal Permit (with associated fee) requesting a departure to remove the last remaining trees on their property;
- 2) Applicant shall pay a dollar amount corresponding to the table (\$750 + \$3,000 = **\$3,750**) to the City Forestry Account; and
- 3) In addition to the fee, the applicant shall replant at the ratio outlined in the table below (1:1 + 2:1 = **3 total replacement trees**).

Overall, the applicant would be required to pay a fee of \$3,750 plus replant with 3 replacement trees to satisfy the permit requirements.

Exhibit 2 below includes the code language to be inserted into the draft KZC 95 if Council selects Option 2.

Exhibit 2. Code Language for Option 2 (KZC 95.25.5)

5. *Tree Removal Allowance Departure.* A property owner may remove the last tree(s) required to remain on a property without demonstrating the tree(s) meet the City's hazard or nuisance tree criteria provided that:

- a. *The tree is not a Landmark Tree;*
- b. *The applicant submits a Tree Removal Permit requesting a departure;*
- c. *The applicant pays a fee to the City Forestry Account in the amount listed in Table 95.25.3 below; and*
- d. *The mitigation standards pursuant to Table 95.23.3 below are met.*

Table 95.25.3. Tree Removal Fee to Remove Last Remaining Trees on Private Property

<i>Diameter of Removed Tree (DBH)</i>	<i>Tree Removal Fee</i>	<i>Required Replacement Tree Ratio</i>
<i>6 to 10 inches</i>	<i>\$750</i>	<i>1:1</i>
<i>10 to 14 inches</i>	<i>\$1,500</i>	<i>1:1</i>
<i>14 to 18 inches</i>	<i>\$3,000</i>	<i>2:1</i>
<i>18 to 22 inches</i>	<i>\$4,500</i>	<i>2:1</i>
<i>22 to 26 inches</i>	<i>\$6,000</i>	<i>2:1</i>

All fee payments shall be paid into the City Forestry Account pursuant to KZC 95.57 and shall be used by the City to fund canopy restoration efforts elsewhere in the City.

Option 3 (least restrictive): Should Council reject Option 1, Option 3 provides for lower Tree Removal Fees and higher Replacement Tree Requirements compared to Option 2.

Option 3 is the most permissive approach and utilizes the proposed fee-in-lieu previously approved by Council (\$450) for trees 6 to 10 inches (with increases for larger-diameter trees). This option proposes both a Tree Removal Fee and mitigation trees; however, instead of basing the fee on the Civil Penalty Fines (approximate appraisal value of tree) it requires a fee-in-lieu based on the size of the tree removed.

Table 2. Option 3 - Tree Removal Allowance Departure

<i>Diameter of Removed Tree (DBH)</i>	<i>Tree Removal Fee</i>	<i>Required Replacement Tree Ratio</i>
6 to 10 inches	\$450	1:1
10 to 14 inches	\$900	2:1
14 to 18 inches	\$1,350	3:1
18 to 22 inches	\$1,800	4:1
22 to 26 inches	\$2,250	5:1

For example, a property owner requesting to remove one 8-inch tree and one 16-inch tree would be required to meet the following requirements:

- 1) Applicant shall submit a Tree Removal Permit (with associated fee) requesting a departure to remove the last remaining trees on their property;
- 2) Applicant shall pay a dollar amount corresponding to the table ($\$450 + \$1,350 =$ **\$1,800**) to the City Forestry Account; and
- 3) In addition to the fee, the applicant shall replant at the ratio outlined in the table below ($1:1 + 3:1 =$ **4 total replacement trees**).

Overall, the applicant would be required to pay a fee of \$1,800 plus replant with 4 replacement trees to satisfy the permit requirements.

Exhibit 3 below includes the code language to be inserted into the draft KZC 95 if Council selects Option 3.

Exhibit 3. Code Language for Option 3 (KZC 95.25.5)

5. *Tree Removal Allowance Departure.* A property owner may remove the last tree(s) required to remain on a property without demonstrating the tree(s) meet the City's hazard or nuisance tree criteria provided that:
- a. The tree is not a Landmark Tree;
 - b. The applicant submits a Tree Removal Permit requesting a departure;
 - c. The applicant pays a fee to the City Forestry Account in the amount listed in Table 95.25.3 below; and
 - d. The mitigation standards pursuant to Table 95.23.3 below are met.

Table 95.25.3. Tree Removal Fee to Remove Last Remaining Trees on Private Property

<i>Diameter of Removed Tree (DBH)</i>	<i>Tree Removal Fee</i>	<i>Required Replacement Tree Ratio</i>
6 to 10 inches	\$450	1:1
10 to 14 inches	\$900	2:1
14 to 18 inches	\$1,350	3:1
18 to 22 inches	\$1,800	4:1
22 to 26 inches	\$2,250	5:1

All fee payments shall be paid into the City Forestry Account pursuant to KZC 95.57 and shall be used by the City to fund canopy restoration efforts elsewhere in the City.

The following table provides a comparison of the fees and mitigation requirements for each of the above presented options.

Table 3. Comparison of Options for Removal of Last Remaining Trees

Diameter of Removed Tree (DBH)	Option 1	Option 2 (fee/mitigation)	Option 3 (fee/mitigation)
6 to 10 inches	Must be hazard/nuisance	\$750 / 1:1	\$450/ 1:1
10 to 14 inches	Must be hazard/nuisance	\$1,500 / 1:1	\$900 / 2:1
14 to 18 inches	Must be hazard/nuisance	\$3,000 / 2:1	\$1,350 / 3:1
18 to 22 inches	Must be hazard/nuisance	\$4,500 / 2:1	\$1,800 / 4:1
22 to 26 inches	Must be hazard/nuisance	\$6,000 / 2:1	\$2,250 / 5:1

B. Discussion of Development Standards and Associated Costs

During the February 1 City Council meeting, members of the Council requested that staff provide more context and information regarding the potential cost developers may incur to comply with variations to development standards to retain High Retention Value Trees. Staff discussed the cost of various techniques with the City's Development Review Committee (engineers and plans examiners) to obtain additional information. The consensus during this meeting was that the cost to the developer for utilizing these development standards will vary substantially depending on the size of the development and specific site conditions, such as topography.

The intent of codifying these development standards is to improve clarity and predictability, as these are tree retention methods that are currently employed to retain trees while allowing development to proceed. As such, the proposed draft code is not expected to increase design and construction costs compared to the existing code. The goal of including this specific list of site plan alterations and variations in the proposed code is to disclose up-front what the City is authorized to require in the event that tree retention is ignored or inadequately addressed by the applicant. These inclusions into the draft code are a response to a key request from City Council and various stakeholders to improve the clarity and predictability of the tree code. A large component of the permit review process is a premise built into the code since its inception that staff and applicants work in good faith to find reasonable solutions. Staff will not require modifications that are glaringly disproportionate to the cost of the home being built to retain trees. Similarly, the code provides for a hierarchy of trees and associated retention expectations – ranging from no expectations for moderate retention value trees to the highest expectations for groves and Landmark Trees.

Under the existing code, development standards are currently utilized (and required) to avoid impacts to critical root zones. Such efforts include boring underground utilities, using hydro or air excavation for utilities and/or foundation limits, adjusting the location of building footprints, driveways, access ways, walkways, easements, and utilities, altering required parking and right-way-improvements, and reduction of lot sizes and required yards.

Because the proposed code now includes a Landmark Tree designation that includes viable trees over 26 inches DBH located anywhere on a subject property, the inclusion of additional variations to construction methods, such as shoring or cantilevering, further facilitates Landmark Tree retention. Larger trees generally require a greater tree protection zone and as such, utilizing methods such as shoring, pier or grade beam footings, and cantilevering will be essential tools to protect Landmark Trees that have the potential for retention while enabling a developer to maximize their square footage and preserving the development guarantees provided for in the draft code.

C. Use of Feasible/Reasonable in the Proposed Draft Code

During the February 1 City Council meeting, members of the Council requested that staff review the proposed code and identify areas where the terms "feasible" and "reasonable" are used, to ensure they are being used appropriately with a clear intention. Staff has reviewed the code in its entirety and identified locations where these terms are used.

The proposed code uses the term "feasible" when referencing actions that may or may not be capable of being accomplished due to site characteristics or project constraints (i.e., relocating

existing gravity-fed utilities). Determining whether such measures are feasible depends on features of the site undergoing development and the locations of existing utilities and easements. For a simple example, a stormwater or sewer line must flow downhill and there may be feasible options for how the pipe is routed downhill around trees. However, it would not be feasible to pump the water or wastewater uphill to avoid trees.

The use of “reasonable” in the code refers to actions that may be appropriate or standard methods. While these standards may be feasible, other contributing factors such as cost and timeline may result in them being unreasonable. Determination of whether a particular development standard is reasonable involves following a commonsense approach to what would normally be expected.

For example, the use of “reasonable” in KZC 95.30.4.b.1.a – “reasonable modifications to the proposed building footprints and driveways” – means that such features can only be required for modification or reconfiguration if the property can maintain its development guarantees of maximum allowed density, number of allowed lots, maximum floor area ratio (FAR), and/or lot coverage. Anything beyond this would be unreasonable and outside of the City’s authority to require.

D. Clarity on Accessory Dwelling Unit (ADU) Construction

There have been a number of comments during review of KZC Section 95.25 (Tree Removal, Not Associated with Development Activity) regarding concerns that tree removal regulations would restrict the ability for property owners to construct either detached or attached ADUs. Staff would like to clarify that if a property owner proposes to build an ADU, tree removal/retention would be governed under KZC 95.30 and the associated building permit, and the tree removal allowances and regulations in KZC 95.25 would not be applicable.

For example, if a property owner submits a building permit for the construction of a detached ADU, they would be required to submit a Tree Retention Plan showing all Regulated trees on their property. The City would then identify trees of High Retention Value (trees in required yards, Landmark Trees, Groves). If the Tree Retention Plan showed any of these trees as proposed for removal and the retention standards of the code indicated that there were options for retention, staff would provide a comment to the applicant. At that time, the property owner would then either submit alternate plans for the location and layout of the ADU utilizing the development standards outlined in the proposed KZC 95.30.4 or provide rationale for why the proposed ADU location is the only feasible option. The Planning Official would then review this proposal and either; a) authorize the applicant to utilize the development standards or, b) approve the tree for removal after the applicant has demonstrated that “there is no practicable or feasible alternative development proposal that results in fewer tree removals” [KZC 95.30.6].

Due to the frequency of this concern that tree retention might limit the City’s desire for more ADUs, staff is proposing an addition to the development guarantees of 95.30 to include ADUs and has added this revision to the draft code.

E. Information on Code Enforcement Violations

At the February 15 City Council meeting, Council requested that staff provide data relating to Civil Penalty Fines pursuant to KMC 1.12.100. The table below shows the total dollar amount of fines collected over the past six years.

Table 4. Civil Penalty Fine Data

	2017	2018	2019	2020	O 4725 Adopted		
					2020	2021	2022
Civil Penalty Fines Collected	\$ 55,500	\$ 18,200	\$ 19,000	\$ 21,000	\$ 22,000	\$ 43,000	TBD
Fee in lieu of restoration fines collected	\$ 7,350	\$ 6,300	\$ 4,900	\$ 1,050	\$ 4,900	\$ 15,400	TBD
Total Tree Related Cases (#)	56	56	47	14	55	38	9
Total Tree Related Cases with Fines Assessed (#)	22	11	17	6	7	8	TBD

F. Response to MBAKS' Letter

MBAKS submitted a comment letter to City Council on February 1, 2022. Staff has reviewed the letter and provided high-level responses to key questions raised in this letter below.

MBAKS Question #1: Can the city please provide support for the 40% canopy cover rationale. In addition, can the city please provide how the 40% canopy and no net loss will be distributed? Is this citywide? For areas currently with 40% cover, will emphasis be placed on areas of the city with far less than 40% tree canopy? Are there areas of the city where a more socially equitable or environmentally equitable approach to tree canopy distribution is recommended? If so, where, and how will the city achieve this equity?

Staff Response: The City-wide 40-percent canopy goal is derived from comprehensive studies conducted by the City to determine the overall health and status of the City's canopy cover and is adopted as policy E-2.1 in the Comprehensive Plan. These studies were conducted in 2011 and 2018 and are updated on 8–10-year cycles. The most recent [2018 Urban Tree Canopy Assessment](#) found that the average canopy cover decreased from 40.7-percent in 2010 to 38.3-percent in 2017, the majority of which occurred on low-density residential properties. Findings from canopy assessments provide important information on the current health of the urban canopy and help to guide objectives in the [Urban Forestry Strategic Management Plan](#). Implementing the goals of this plan is one of the main objectives of the [City's Comprehensive Plan](#) (Policy E-2.2). The City ensures these objectives are met by creating 6-year work plans with specific and actionable objectives ([Urban Forest 6-Year Work Plan 2021-2026](#)).

As part of the on-going Urban Canopy Assessments, one of the main objectives is to utilize Census Block Groups (CBGs) to ensure environmental justice and equity throughout the City. Using this data, targeted goals can be set for replanting and reforestation by comparing Urban Tree Cover (UTC) with demographic and socioeconomic data. The City is currently working on a

project with Plan-It Geo and the King Conservation District (KCD) to identify areas with low Tree Equity. Tree Equity is a metric that assesses the distribution of tree canopy throughout a community. The analyzed data include a combination of different measures such as: canopy cover, climate, demographic, and socioeconomic data. The City has two upcoming projects related to tree inventory and tree banks that will leverage the outcome of the tree equity work to explore canopy restoration opportunities. In addition, Public Works and Planning and Building are coordinating two tree giveaway programs this year to help homeowners add canopy in their neighborhoods.

In addition to private property tree management, the City is taking an active approach in managing the urban forest on public property through property acquisition and reforestation, and extensive efforts from Green Kirkland Partnership, which currently has 260 acres of active restoration sites and has planted over 2,500 native plants (including a number of tree planting projects funded by the City Forestry Account).

MBAKS Question #2: Does the city have measurable goals and milestones for achieving the 40% or more canopy goal and a consistent no net loss of tree canopy through KZC Chapter 95 and the Urban Forestry Strategic Management Plan? If so, what measurements will the city undertake to ensure this is being achieved and how will they be reported out?

Staff Response: The City conducted Tree Canopy Assessments in [2011](#) and [2018](#) to track canopy and progress towards the City's 40-percent canopy goal. Kirkland intends to maintain its commitment to measuring canopy cover on 8–10-year cycles at a minimum. By looking at tree canopy cover in specific areas and comparing it to prior studies, any changes can reveal the effectiveness of urban forest management, including the effectiveness of KZC 95. Following completion of an updated canopy assessment, the data is presented to City Council and publicly available on the [City's Website](#). In recent discussions with Plan-It Geo and KCD, staff learned about advances in canopy assessment technology that might enable us to procure more frequent canopy data at a lower cost based on a subscription service. Staff is exploring this further with KCD as either a City or District opportunity whereby we would not need to wait on these longer inventory cycles to decide whether policy adjustments are necessary.

In addition to the regularly updated canopy assessments, the City produces 6-year work plans to ensure the City's Urban Canopy is being actively managed and that the City is achieving the goals outlined in the Comprehensive Plan, Sustainability Master Plan, and Urban Forestry Strategic Management Plan. Included in the current work plan is to conduct a City-wide tree inventory for all Right-of-Way trees and trees on City-owned properties. This project is currently funded and will be completed over the next year.

MBAKS Question #3: For the last three and a half years the city has undertaken this body of work. Before moving these amendments forward, MBAKS would respectfully ask Council if these proposed amendments:

- **Are poised to achieve a diverse, climate resilient, citywide 40% canopy?**

Staff response: Yes, see responses to comments #1 and 2 above.

- **Are easier to understand or implement than the current code?**

Staff response: Yes, the majority of "sticking points" that exist in the current code have been re-written to provide more clarity. All areas in the existing code that were confusing or difficult to interpret were identified during multiple analyses and studies of

the code in 2018 and 2019 by the PC, HCC, City staff, and various stakeholders, and have been revised accordingly.

- **Provide balance for trees and housing?**

Staff response: Despite concerns over the rigidity of the code and allegations that it is stopping or slowing development, in the past 3 years the City has issued nearly 900 new single-family permits as well as nearly 1,500 homeowner tree removal permits. The intent of the revised tree code is not to limit development (note proposed development guarantees in KZC 95.30) but to enhance tree retention on sites undergoing re-development.

- **Protect private property rights?**

Staff response: The proposed code allows increased flexibility for homeowners to remove trees on their properties. Tree removal allowances are higher with the proposed code than that of the existing code. Additionally, the fee-in-lieu option allows homeowners to have more flexibility with how they choose to re-vegetate their properties.

- **Provide predictability without endless review cycles?**

Staff response: The proposed code provides clearer information on expectations when re-developing a property. It clearly outlines which trees are expected for retention and which trees will receive comments from the city. This allows developers to proactively address these before applying for a development permit and reduce surprise if the application does get a City comment about tree retention. It should be noted that additional review cycles are not typically the result of Urban Forestry comments, but rather comments from Planning, Building, and/or Public Works on other aspects of code compliance.

To further prevent additional review cycles, the City will be offering in-person and online trainings for Qualified Professional Arborists, homeowners, and developers on how to use the new tree code. This will help to reduce multiple rounds of reviews by ensuring applicants and their consultants have a firm grasp on the tree code and submit acceptable materials with their permit application.

- **Focused on the right tree in the right place?**

Staff response: The City does not require the retention of trees that will become a future hazard and/or nuisance tree and will continue to do so when implementing the new tree code. Based on stakeholder feedback, the draft code also adopts by reference a prohibited plant list that will both specify trees that cannot be planted as well as trees that will not be regulated (i.e., alders and cottonwoods outside of critical areas).

- **Will improve environmental outcomes?**

Staff response: The designation of Landmark Trees resulted from studies conducted which found that large trees, categorized as 22 inches DBH or greater in that study, had the lowest retention percentage on sites undergoing development. Studies show that large trees provide greater functional environmental benefits than smaller ones. By adding provisions that prioritize the retention of large trees, impacts from urbanization and redevelopment can be decelerated.

Additionally, the proposed code requires enhanced mitigation tree requirements for the

removal of trees both for homeowner tree removals and sites undergoing redevelopment. By requiring more robust mitigation standards, environmental benefits of new tree plantings can be actualized within 5 to 10 years following planting. The proposed code also provides expanded opportunities for applicants to contribute to the City Forestry Account, where funds can be applied to City efforts at canopy restoration on public property.

- **Address environmental equity or justice?**

Staff response: Yes, see responses to comments #1 and 2 above.

G. Miscellaneous Code Amendments

During the February 15 City Council meeting, Council requested several minor revisions, all of which have been completed and are shown underlined in red below.

Comment #1: Revise “Pruning” definition to clarify that acceptable pruning measures shall not exceed 25 percent canopy removal per ANSI A300 Pruning Standards.

Staff Response: This definition has been revised to include this standard. For reference, the ANSI standard refers to a specific timeframe of an annual growing season for this percentage of pruning. This definition has been revised as follows:

KZC 95.10.11. Pruning – the practice of selectively removing branches (or roots) from a tree or other plant, using approved practices, to achieve a specified objective. Pruning that does not follow best management practices in the ANSI A300 Pruning Standards and results in more than 25 percent removal during a pruning event is not an acceptable practice.

Comment #2: Revise Forest Stewardship Plan (95.25.10) to guide applicants to seek direction from City staff when preparing plans.

Staff Response: Section revised as follows:

KZC 95.25.10. Applicants for a Forest Stewardship Plan are encouraged to seek direction from City staff and the technical assistance, incentives and resources available through local and state agencies that promote forestland best management practices.

Comment #3: Revise section of 95.44 to state that “The applicant shall arrange the required landscaping throughout the parking lot in a manner that:
~~Maximizes~~ Creates natural drainage landscapes...”

Staff Response: Section revised as follows:

KZC 95.44.3.b. The applicant shall arrange the required landscaping throughout the parking lot in a manner that:

~~Maximizes~~ Creates natural drainage landscapes (such as rain gardens, bio-infiltration swales and bioretention planters) designed in compliance with the stormwater design manual adopted in KMC 15.52.060 (refer to Public Works Pre-Approved Plans);

Comment #4: Revise section 95.44 to provide similar landscaping requirements for rooftop parking lots as was created for surface parking lots.

Staff Response: Section revised as follows:

5. *Rooftop Parking Landscaping.* For a driving or parking area on the top level of a structure that is not within the CBD zone or within any zone that requires design regulation compliance, the parking lot must contain five square feet of landscaped area per parking stall, consisting of planters with a soil depth of at least 30 inches. ~~one planter that is 30 inches deep and five feet square must be provided for every eight stalls on the top level of the structure, planted with~~ Planters must contain at least one deciduous tree, two inches in caliper or one coniferous tree six feet in height for every 30 square feet of landscaped area. The landscaping plan for the project shall include an irrigation plan for the rooftop planting. The applicant shall arrange the required landscaping throughout the parking lot in a manner that:

- a) Utilizes tree and/or shrub species ~~Each planter must contain a small tree or large shrub suited to the size of the container and the specific site conditions, including desiccating winds, and is clustered with other planters near driving ramps or stairways to maximize visual effect;~~
- b) Consolidates planting areas of trees into larger groupings with appropriate soil volumes;
- c) Maximizes shading of paved surfaces by tree and shrub canopy to reduce potential heat island effect;

Comment #5

Revised fee-in-lieu language throughout the code to clarify the specific fee amount and include a statement that allows for the City to adjust the fee over time to reflect changes in materials and labor costs.

Staff Response: KZC 95.23.5 revised as follows:

~~The applicant may elect to not plant mitigation trees on the subject property and pay a fee in lieu of planting. The fee in lieu shall be determined by the City based on the formula outlined in the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers. The fee in lieu shall be multiplied by the number of required mitigation trees. All fee in lieu payments shall be paid into the City Forestry Account pursuant to KZC 95.57 and shall be used by the City to fund canopy restoration efforts elsewhere in the City.~~

The applicant may elect to not plant mitigation trees on the subject property and pay a fee in lieu of planting. The fee in lieu shall be \$450 per required mitigation tree that is not planted on the subject property. The fee in lieu cost shall be multiplied by the number of required mitigation trees. All fee in lieu payments shall be paid into the City Forestry Account pursuant to KZC 95.57 and shall be used by the City to fund canopy restoration efforts elsewhere in the City. The Planning and Building Director is authorized to adjust the fee in lieu value periodically to reflect current City costs of materials and labor.

KZC 95.34.7 revised as follows:

Payment in-Lieu of Planting. When the Planning Official determines on-site and off-site locations are unavailable, then the applicant shall pay an amount of money in lieu of planting set at \$450. The fee in lieu cost shall be multiplied by the number of required tree credits or mitigation trees. All fee in lieu payments shall be paid into the City Forestry Account pursuant to KZC 95.57. The Planning and Building Director is authorized to adjust the fee in lieu value periodically to reflect current City costs of materials and labor. ~~shall be established according to the formula outlined in the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers. The replacement tree value shall be determined by the City. Unit costs for conifers and deciduous trees shall be multiplied by~~

~~the number of required tree credits or mitigation trees. All fee in lieu payments shall be paid into the City Forestry Account pursuant to KZC 95.57.~~

V. CRITERIA FOR AMENDING THE TEXT OF THE ZONING CODE

[Kirkland Zoning Code Chapter 135.25](#) establishes the criteria for amendments to the text of the zoning code. The City may amend the text of the Zoning Code only if it finds that:

1. The proposed amendment is consistent with the applicable provisions of the Comprehensive Plan; and
2. The proposed amendment bears a substantial relation to public health, safety, or welfare; and
3. The proposed amendment is in the best interest of the residents of Kirkland; and
4. When applicable, the proposed amendment is consistent with the Shoreline Management Act and the City's adopted shoreline master program.

Staff Conclusions

The proposed amendments to the Zoning Code are consistent with the criteria listed above. The amendments directly align with Goal E-1 of the Comprehensive Plan to "Protect and enhance Kirkland's natural systems and features" and Goal E-2 to "Protect, enhance and restore trees and vegetation in the natural and built environment," which includes implementing the City's Urban Forest Strategic Management Plan. One of the main objectives identified in this Plan is to "Update tree codes and ordinances to simplify & clarify."

Consistent with adopted City goals and policies, the intent of the amendments is to lessen site disturbance associated with development and protect and enhance the City's tree canopy while allowing the City to accommodate future housing and employment growth. These amendments support the public health, safety and welfare of the community, and are in the best interests of the residents of Kirkland in that the code provides an avenue for implementing the balanced policies in the City's Comprehensive Plan. No amendments to the Shoreline Master Program are proposed.

VI. KZC 95 EFFECTIVE DATE:

KZC code changes will involve comprehensive implementation phases. Staff recommends an effective date for KZC 95 two months following the date of Council adoption. The following schedule outlines key components of implementing the new KZC 95.

Implementation of KZC 95

1. March 2022: Adoption of KZC 95
2. April/May 2022: Update internal procedures and conduct external outreach, including:
 - a. Internal procedure updates, including:
 - Update Energov and MyBuildingPermit (MBP) – the City's internal permit-tracking software and external applicant portal – with new permit templates
 - Conduct internal staff training on implementing KZC 95
 - Revise City website with new KZC 95 information
 - Prepare informational handouts for external distribution
 - b. External outreach, including:
 - Conduct workshops / trainings on new KZC 95 for both qualified professional arborists and developers

- Outreach to residents utilizing current platforms and listservs
- Outreach to applicants with presubmittal meetings completed in the past 6-months to inform them on the new KZC 95 and effective date

3. June 2022 (or two months after the adoption date): KZC 95 effective date

Attachments

1. Progress Tracking Matrix
2. Ordinance O-4786
3. Publication Ordinance O-4786
4. Exhibit A – Final Consolidated Draft KZC 95

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

Kirkland Tree Code (KZC 95)
Progress Tracking Matrix

Attachment 2

KZC	Section Title	Updates	Council Review	Council Direction	Staff Response
95.05	Purpose and Intent	No impact	November 16, 2021 & February 1, 2022	Revisions required - revise purpose to "City-wide tree canopy coverage of at least 40 percent"	☒ Completed. See KZC 95.05
95.10	Definitions	Minor	November 16, 2021, February 15 & March 15, 2022	Revisions required - Add definition of "Pruning" Edit definition of pruning to include 25% limit	☒ Completed. See KZC 95.10(11)
95.15	Exempt Tree Removal Activities (previously 95.20)	Minor	November 16, 2021	Retain proposed language	
95.20	Public Tree – Pruning and Removal (previously 95.21)	Minor	November 16, 2021	Retain proposed language	
95.21	Private Property – Tree Pruning (previously 95.23)	Minor	November 16, 2021	Retain proposed language	
95.23	Landmark Trees – Mitigation Requirements	Moderate/Major	January 4, 2022	Retain proposed language	
95.25	Private Property – Tree Removal, Not Associated with Development Activity	Moderate/Major	January 4, February 15, & March 15, 2022	Revisions required – options for increased tree removals	☒ Completed. To be reviewed 3/15/2022
95.30	Tree Retention Associated with Development Activity	Moderate/Major	February 1 & February 15, 2022	Revisions required	☒ Completed. Reviewed 2/15/2022
95.32	Tree and Soil Protection during Development Activity	Minor	November 16, 2021	Retain proposed language	
95.34	Tree Replacement Standards Related to Development Activity	Moderate/Major	February 1 & 15, 2022	Revisions required - include incentives for planting tree groves	☒ Completed. To be reviewed 2/15/2022
95.40	Required Landscaping Based on Zoning District	None	November 16, 2021	Retain proposed language	
95.41	Supplemental Plantings	None	November 16, 2021	Retain proposed language	
95.42	Land Use Buffer Requirements	None	November 16, 2021	Retain proposed language	
95.43	Outdoor Use, Activity, and Storage	None	November 16, 2021	Retain proposed language	
95.44	Internal Parking Lot Landscaping Requirements	Moderate/Major	February 15 & March 15, 2022	Revisions required – edit rooftop landscaping requirements	☒ Completed. To be reviewed 3/15/2022
95.45	Perimeter Landscape Buffering for Driving and Parking Areas	None	February 15, 2022	Revisions required	☒ Completed. Reviewed 2/15/2022
95.46	Modifications to Required Landscaping and Buffer Standards	None	November 16, 2021	Retain proposed language	
95.47	Nonconforming Landscaping and Buffers	None	November 16, 2021	Retain proposed language	
95.50	Installation Standards for Required Plantings	Minor	November 16, 2021	Retain proposed language	
95.51	Tree and Landscape Maintenance Requirements	Moderate/Major	February 15, 2022	Revisions required	☒ Completed. Reviewed 2/15/2022
95.52	Prohibited Vegetation	None	November 16, 2021	Retain proposed language	
95.55	Enforcement and Penalties	Minor	February 1, 2022	Retain proposed language	
95.57	City Forestry Account	Minor	February 15, 2022	Revisions required	☒ Completed. Reviewed 2/15/2022