



CITY OF KIRKLAND
Planning and Building Department
123 5th Avenue, Kirkland, WA 98033
425.587.3600- www.kirklandwa.gov

MEMORANDUM

To: Planning Commission
Houghton Community Council

From: Nick Cilluffo, Senior Planner
Jeremy McMahan, Deputy Planning & Building Director

Date: September 1, 2020

Subject: Code Amendments to Streamline Public Projects, File No. CAM20-00334

Staff Recommendation

Conduct a public hearing to receive comments on the draft code amendments to the Kirkland Zoning Code (KZC) (see Attachment 1). After conclusion of the public hearing, staff recommends that the Houghton Community Council (HCC) discuss any matters of interest and make a recommendation to the Planning Commission (PC). Staff recommends that the PC deliberate and make a recommendation to the City Council. The City Council is anticipated to consider and take action on the recommendation of the PC on October 6.

Background

Public projects are those development and construction activities associated with the City's Capital Improvements Program, Parks, Recreation and Open Space (PROS) Plan, schools, as well as other public agency and utility projects implemented by non-City entities. Examples of public projects include right-of-way work to install roadway infrastructure, redevelopment of public parks, installation and maintenance of public utilities, and construction of emergency service facilities such as fire stations. These projects provide a variety of public services and have community-wide benefits to City of Kirkland residents and visitors. The outcomes of these projects are what make Kirkland a desirable place to live – high quality parks, well-maintained roads and infrastructure, and reliable essential services. Furthermore, the City's ability to efficiently implement public projects ensures preparedness and capacity to accommodate planned growth. This code amendment project was added to the City's Planning Work Program in 2019 in recognition of the City's recent adoption of its largest Capital Improvement Program (CIP) in history, and the need to streamline permitting of these public projects to ensure prompt delivery to the community, while ensuring that environmental/neighborhood factors are considered.

While managed and often designed by City staff in the Department of Public Works, public projects are subject to the Kirkland Municipal and Zoning Codes. In many cases they require review and permitting by the Planning and Building Department, as well as the development review team within the Department of Public Works. These reviews ensure compliance with applicable local, state, and federal codes. Application of local codes on public projects, however,

often results in inefficient processes that provide little substantive value. Additionally, the unique nature of many public projects renders certain processes unnecessary or duplicative, presents challenges in implementing codes primarily written for private development, and generates ambiguity when local codes do not explicitly provide standards for certain project types. For these reasons, Planning and Public Works staff have collaborated on identifying opportunities to streamline public projects to enable more efficient and cost-effective implementation, and ensure delivery of a robust CIP to the community.

Project

Planning staff and the Public Works CIP team identified several opportunities to amend sections of the Kirkland Zoning Code. The draft code amendments are intended to reduce procedural hurdles that often slow the planning and construction process, and often increase the cost of public projects. These amendments also provide clarity on process and application of regulations for certain public projects, while ensuring that substantive requirements related to the protection of public health and the environment are met.

Specifically, the draft code amendments include:

- Expediting procedural requirements for certain types of reviews;
- Allowing temporary government facility uses without a land use review requirement; and
- Clarifying decision making and applicable standards related to public project construction.

Draft Code Amendments and Analysis

Each code amendment category is noted below, including a table identifying the pertinent code section(s), current requirements, and proposal. Following each table is an analysis of that proposal. The precise code amendments for each are included in Attachment 1, with the text changes identified by ~~strikethrough~~ for deletions and **bold/underline** for insertions.

1. Expedite the review of critical area exceptions for public projects.

Code section	Current requirement	Proposal
KZC 90.30 KZC 90.45 KZC 90.50	Public Agency/Utility Exceptions require Process I review and Planning Director decision.	Change review process from Process I to an administrative review with Planning Official decision.

Analysis: Public Agency/Utility Exceptions allow for implementation of public projects that would otherwise be prohibited due to site encumbrances by streams, wetlands, and their buffers. Similar to a Reasonable Use Exception, these exceptions recognize the inability to construct a project without impacting a critical area and allow construction with implementation of mitigating measures. The process for a Public Agency/Utility Exception is a Process I, which entails public noticing and a public comment period. Since 2017, when the Public Agency/Utility Exception was added to KZC Chapter 90, six projects have used the process, with only one comment received for all of those projects combined. Furthermore, many public projects processed as Public Agency/Utility Exceptions have limited alternatives that may be considered given the constraints relating to right-of-way boundaries, necessary utility line locations, etc. The very small number of comments received and the limited

substance conveyed by these comments, as well as the limited alternatives to project proposals, have rendered the public noticing and comment period required of a Process I review unnecessary. This amendment will eliminate the Process I review and allow staff to administratively review Public Agency/Utility Exceptions, which will provide a more efficient permitting process (saving approximately three months during the review and permitting process for a typical project) while maintaining the same regulatory outcome for these projects. Staff would also note that the creation of the CIP includes public input, so that members of the community can express their concerns when project concepts are being discussed. Therefore, this particular code amendment would not preclude input from the community on public projects.

2. Eliminate Design Review process for fire station development.

Code section	Current requirement	Proposal
KZC 142.15	Depending on underlying zoning, full Design Board Review may be required for development of a new fire station.	Exempt fire stations from Design Review.

Analysis: The functional nature of fire station buildings makes it difficult to apply extensive design requirements. Fire stations always feature large garage doors for apparatus bays, as well as expansive driveway areas for maneuvering vehicles. In zones that are identified as design districts, the Kirkland Zoning Code requires Design Board Review for fire station development, which presents a cumbersome process for designing buildings where form is highly dictated by function. This amendment would exempt fire station development from Design Review. Development standards such as building height, setbacks, lot coverage, and landscaping will be reviewed as part of the building permit for a fire station. Additionally, where applicable, SEPA review will provide an opportunity to further review fire station developments to ensure compatibility with the surrounding neighborhood.

3. Allow temporary government facility uses without requiring zoning permit review.

Code section	Current requirement	Proposal
KZC 115.xx (NEW)	No existing allowance or regulation of temporary government facilities.	Add section allowing temporary government facilities under specific circumstances (i.e., public service provision or emergency response) without need for land use approval or application of development standards.

Analysis: The Kirkland Zoning Code does not currently allow for temporary government facility uses without the same land use review process required for a permanent use. For example, an interim fire station use needed during the renovation period of an existing fire station would require the same review as if it were a permanent facility. The land use review for a permanent government facility use, typically a Process IIA, involves extensive public noticing, comment, and hearing before deciding on the use proposal. Furthermore, application of development standards presents sometimes-prohibitive site design challenges

for these temporary uses, which have short term impacts on surrounding properties and neighborhoods. Given the finite nature of temporary government facility uses and their impacts, as well as the need for interim public services while existing or new facilities are improved or constructed, the Process IIA land use review is unnecessary and causes needless delays in implementing essential public projects. This amendment will allow temporary government facility uses, in specific circumstances, to be located in any zone without requiring a land use permit and application of development standards. A requirement for public noticing is included in the draft regulation to ensure that the community is informed of the temporary facility.

4. Identify authority for approving temporary construction staging sites and clarify required site standards.

Code section	Current requirement	Proposal
KZC 115.xx (NEW)	No existing explicit regulations.	Add section that authorizes the Director of Public Works to approve staging sites and specify site standards.

Analysis: Staging areas are an unavoidable component of construction. Public projects face challenges in locating staging areas due to limited right-of-way area. When such constraints exist, private parcels adjacent or proximate to project sites are often used for material stockpiling and equipment storage. The Kirkland Zoning Code does not clearly provide an authority for decision making and implementation of site standards on these private parcels. This amendment would explicitly give the Director of Public Works authority to approve construction staging sites and require specific site standards to be followed during use of the site in order to minimize impacts on the surrounding neighborhood.

In addition to the draft Zoning Code amendments presented above, staff will be recommending a Municipal Code amendment to City Council, which relates to permit exemptions for work within the public right-of-way. This amendment will clarify what types of critical areas will trigger Land Surface Modification (grading) permits for right-of-way projects.

Attachments:

1. Draft KZC Amendments

cc: File Number CAM20-00334

AMENDMENTS TO THE KIRKLAND ZONING CODE

*NOTE: Text to be added is in **bold and underlined**. Text to be removed is ~~crossed-out~~.*

KZC 90.30 City Review Process*

1. Activities regulated by this chapter shall be considered using the following decision processes:

Table 90.30.1 City Review Process

Type of Action	City Review Process	Section
Exemptions	Activities permitted outright with no review process (or reviewed with underlying development or land surface modification permit – no review fee)	KZC 90.35
Permitted Activities, Improvements and Uses Subject to Development Standards	Planning Official Decision	KZC 90.40
Exception – Public Agency and Public Utility	Planning Director – Process I, Chapter 145 KZC <u>Planning Official Decision</u>	KZC 90.45
Programmatic Permits – Public Agency and Public Utility	Planning Official Decision or Planning Director – Process I, Chapter 145 KZC depending on scope of project	KZC 90.50
Wetland Modification	Planning Director – Process I, Chapter 145 KZC	KZC 90.60
Category IV Wetland Exceptions	Planning Official Decision	KZC 90.60
Stream Modification	Planning Director – Process I, Chapter 145 KZC	KZC 90.70
Daylighting of Streams	Planning Official Decision	KZC 90.75
Stream Channel Stabilization	Planning Official Decision	KZC 90.85
Moorage Facilities and Other Improvements on Minor Lakes	Planning Director – Process I, Chapter 145 KZC	KZC 90.90
Critical Area Determination	Planning Official Determination	KZC 90.105
Buffer Averaging	Planning Official Decision	KZC 90.115
Limited Buffer Waiver	Planning Official Decision	KZC 90.120
Reasonable Use Exception	Planning Director – Process I, Chapter 145 KZC; or Hearing Examiner – Process IIA, Chapter 150 KZC (for extraordinary circumstances)	KZC 90.180A or 90.180B*

2. If a development, use or activity requiring approval through Planning Official or Process I pursuant to this chapter is part of a proposal that requires additional approval through Process IIA or Process IIB, the entire proposal shall be decided upon using that other process.
 - a. The decisional criteria for a permit reviewed under a Process I in this chapter shall be used for the Process IIA or Process IIB decision.
 - b. The decisional criteria, standards and/or requirements for a decision reviewed under a Planning Official Decision in this chapter shall be used for the Process IIA or Process IIB decision.

[KZC 90.35 through 90.40 – NO CHANGE]

KZC 90.45 Public Agency and Public Utility Exceptions

If strict application of this chapter would prohibit a development proposal by a public agency or public utility, the agency may apply for an exception pursuant to this section.

1. General – Prior to seeking approval through this section, the Planning Official in conjunction with a public agency or public utility shall first determine that:
 - a. The project scope cannot be approved under KZC 90.60 for wetland modifications; KZC 90.70 for stream modifications; KZC 90.85 for stream channel stabilization; and KZC 90.95 for wildlife habitat conservation areas; and
 - b. The project cannot meet the requirements under KZC 90.130, Vegetative Buffer Standards; and KZC 90.140, Structure Setback from Critical Area Buffer; or any other provision in this chapter.
2. Process – A critical area exception for public agencies and public utilities shall be reviewed and decided upon using ~~Process I, pursuant to Chapter 145 KZC~~ **by the Planning Official**.
3. Decisional Criteria – The Planning ~~Director~~ **Official** shall make a decision based on the following criteria:
 - a. There is no other practical alternative to the proposed project with less impact on the critical areas or buffer;
 - b. Strict application of this chapter would unreasonably restrict or prohibit the ability to provide public utilities or public agency services to the public;
 - c. The proposal minimizes impacts to the critical area or buffer through mitigation sequencing, and through type and location of mitigation, pursuant to KZC 90.145 and 90.150, if applicable, including such installation measures as locating facilities in previously disturbed areas, boring rather than trenching, and using pervious or other low impact materials; and
 - d. The proposal protects and/or enhances critical area and buffer functions and values, consistent with the best available science and with the objective of no net loss of critical area functions and values.
4. Submittal Requirements – The application shall include the City’s critical area determination pursuant to KZC 90.105; a critical area report pursuant to KZC 90.110; a mitigation plan pursuant to KZC 90.145, and a mitigation plan pursuant to KZC 90.150 if a wetland is to be modified; a response to the decisional criteria in subsection (3) of this section; and the following documents and/or analysis based upon the type of exception proposed in order to determine that the strict application of this chapter would otherwise prohibit a development proposal:
 - a. Wetland Modifications
 - 1) The public agency or public utility shall submit a wetland modification assessment pursuant to KZC 90.60(6); and
 - 2) The public agency or public utility shall demonstrate that the requirements in KZC 90.60(8) and (9) cannot be met.
 - b. Stream Modifications
 - 1) The public agency or public utility shall submit a stream modification assessment pursuant to KZC 90.70(5); and

- 2) The public agency or public utility shall demonstrate that the requirements in KZC 90.70(6) and (7) cannot be met.
- c. Daylighting of Stream – The public agency or public utility shall submit a stream daylighting plan demonstrating that the requirements in KZC 90.75(3) cannot be met.
- d. Stream Channel Stabilization – The public agency or public utility shall submit a streambank assessment and stream channel stabilization plan demonstrating that the requirements in KZC 90.85(5) and (6) cannot be met.
- e. Wildlife Habitat Conservation Area Modifications
 - 1) The public agency or public utility shall submit an assessment of a habitat conservation area pursuant to KZC 90.95(3), a habitat management plan pursuant to KZC 90.95(6); and
 - 2) The public agency or public utility shall demonstrate that the requirements in KZC 90.95(7) cannot be met.
- f. Buffer Averaging – The public agency or public utility shall demonstrate that the standards in KZC 90.115(2) cannot be met.
- g. Vegetative Buffer Standards – The public agency or public utility shall demonstrate that the standards in 90.130(2) through (4) cannot be met.
- h. Structure Setback – The public agency or public utility shall demonstrate that the standards in KZC 90.140 cannot be met.
5. Waiver – Planning Official may waive a specific submittal requirement if it is determined not to be applicable or necessary.

KZC 90.50 Programmatic Permit – Public Agency and Public Utility

1. General – A public programmatic permit may be issued for either a permitted activity subject to the submittal requirements and development standards of permitted activities, improvements and uses with standards in KZC 90.40 or public agency or public utility exception in KZC 90.45, if it meets the requirements of this section, as determined by the Planning Official. Exempted activities pursuant to KZC 90.35 do not require a programmatic permit.
2. Criteria for a Programmatic Permit – The activity shall:
 - a. Be repetitive and part of a maintenance program or other similar program;
 - b. Have the same or similar identifiable impacts, as determined by the City, each time the activity is repeated at all sites covered by the programmatic permit; and
 - c. Be suitable to having standard conditions that will apply to all sites.
3. Process – **The Planning Official shall make the decision on the programmatic permit.**
 - a. ~~For an activity that would otherwise be approved as a permitted activity subject to development standards, the Planning Official shall make the decision on the programmatic permit.~~
 - b. ~~For an activity that would otherwise be approved as a public agency or public utility exception, the programmatic permit shall be reviewed and decided upon pursuant to a Process I described in Chapter 145-KZC.~~

4. Required Conditions – The City shall uniformly apply conditions to each activity authorized under the programmatic permit at all locations covered by the permit. The City may require that the applicant develop and have uniformly applicable conditions as part of the programmatic permit application, subject to City approval. The City shall not issue a programmatic permit until applicable conditions are developed and approved by the City.

5. Inspections – Activities authorized under a programmatic permit shall be subject to inspection by the Planning Official and prearranged in advance. The Planning Official may require that the applicant submit periodic status reports. The frequency, method and contents of the inspection notifications and reports shall be specified as conditions in the programmatic permit.

6. Revisions and Modifications to Permit – The Planning Official may subsequently require revisions, impose new conditions or otherwise modify the programmatic permit or withdraw the permit and require that the applicant undergo review for a new permitted activity approval or new exception for a public agency and public utility, if the Planning Official determines that:

- a. The programmatic permit or activities authorized under the permit no longer comply with this chapter;
- b. The programmatic permit does not provide adequate regulation of the activity;
- c. The programmatic permit conditions or the manner in which the conditions are implemented are not adequate to protect against the impacts resulting from the activity; or
- d. A site requires site-specific regulation.

7. Other Agency Requirements – If an activity covered by a programmatic permit also requires other county, state and/or federal approvals, to the extent feasible, the City shall reference those conditions of other approvals in the programmatic permit.

[KZC 90.55 through 90.225 – NO CHANGE]

142.15 Development Activities Requiring D.R. Approval

1. Design Board Review (D.B.R.)

a. The following development activities shall be reviewed by the Design Review Board pursuant to KZC 142.35:

- 1) New buildings greater than one (1) story in height or greater than 10,000 square feet of gross floor area, or in the Market Street Corridor Historic District (MSC 3 Zone).
- 2) Additions to existing buildings where:
 - a) The new gross floor area is greater than 10 percent of the existing building's gross floor area; and
 - b) The addition is greater than 2,000 square feet of gross floor area; and
 - c) Either:
 - 1) The existing building and addition total more than 10,000 square feet of gross floor area; or
 - 2) The addition adds another story; or
 - 3) Is in the Market Street Corridor Historic District (MSC 3 zone).
- 3) Renovations to existing facades, where the building is identified by the City as an historic structure or is in the Market Street Corridor Historic District (MSC 3 zone).

b. Exemptions from D.B.R. – The following development activities shall be reviewed through the administrative design review process in KZC 142.25:

- 1) Any development where administrative design review is indicated in the applicable Use Zone Chart.
- 2) Any development in the following zones within the Rose Hill Business District (RHBD): RH 8 except development that includes lots or portions of lots located more than 120 feet north of NE 85th Street, between 132nd Avenue NE and properties abutting 131st Avenue NE, PR 3.6, RM, PLA 17A.
- 3) Any development in the MSC 1 and MSC 4 zones located within the Market Street Corridor.

2. Administrative Design Review (A.D.R.) – All other development activities not requiring D.B.R. review under subsection (1) of this section shall be reviewed through the A.D.R. process pursuant to KZC 142.25.

3. Exemptions from Design Review – The following development activities shall be exempt from either A.D.R. or D.B.R. and compliance with the design regulations of Chapter 92 KZC:

- a. Any activity which does not require a building permit; or
- b. Interior work that does not alter the exterior of the structure; or
- c. Normal building maintenance including the repair or maintenance of structural members; or
- d. Any development listed as exempt in the applicable Use Zone Chart; ~~or~~

e. Development of a fire station.

115.xx Temporary Government Facilities

1. General – Under the following circumstances, a temporary government facility may be located on a property without requiring approval under the required review process for the use, and not subject to the dimensional requirements and development standards of such use, in the applicable zone in Chapters 15 through 56 KZC:

a. When an interim facility is necessary to provide service during construction of a related permanent facility. The temporary government facility may be located and operated for a duration not to exceed the construction period of the permanent government facility.

b. When a temporary facility is necessary in response to an emergency proclamation. The temporary government facility may be located and operated for a duration not to exceed the emergency proclamation.

2. Notice – Except when a temporary government facility is established in response to an emergency proclamation, the applicable City department shall provide notice and contact information at least 30 days prior to occupying a site. The notice shall be distributed as follows:

a. The notice, including a vicinity map, will be distributed to the owners of all property within 300 feet of any boundary of the subject property.

b. The notice, including a vicinity map, will be distributed to the residents of each piece of property adjacent to or directly across the street from the subject property.

115.xx Temporary Construction Staging for Public Projects
Temporary construction staging associated with public projects supervised by the City of Kirkland Department of Public Works may be approved by the Director of Public Works. The approval shall establish standards that minimize site impacts, including but not limited to tree and soil protection consistent with KZC Chapter 95. City contact information shall be posted on site.

