

ORDINANCE O-4739

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING AND LAND USE AND AMENDING THE KIRKLAND ZONING CODE CHAPTERS 90, 115, AND 142, ORDINANCE 3719 (AS AMENDED), AND APPROVING A SUMMARY FOR PUBLICATION, FILE NO. CAM20-00334.

1 WHEREAS, the City Council has received a recommendation
2 from the Kirkland Planning Commission and the Houghton Community
3 Council to amend certain sections of the Kirkland Zoning Code, as set
4 forth in the report and recommendation of the Planning Commission and
5 the Houghton Community Council dated September 24, 2020 and
6 bearing Kirkland Planning and Building Department File No.CAM20-
7 00334; and
8

9 WHEREAS, prior to making the recommendation, the Kirkland
10 Planning Commission and Houghton Community Council, following
11 notice as required by RCW 36.70A.035, on September 10, 2020, held a
12 joint public hearing on the amendment proposals and considered the
13 comments received at the hearing; and
14

15 WHEREAS, pursuant to the State Environmental Policy Act
16 (SEPA), there has accompanied the legislative proposal and
17 recommendation through the entire consideration process, a SEPA
18 Addendum to Existing Environmental Documents issued by the
19 responsible official pursuant to WAC 197-11-625; and
20

21 WHEREAS, in a public meeting on November 4, 2020, the City
22 Council considered the environmental documents received from the
23 responsible official, together with the report and recommendation of the
24 Planning Commission and Houghton Community Council.
25

26 NOW, THEREFORE, the City Council of the City of Kirkland do
27 ordain as follows:
28

29 Section 1. The following specified sections of the Kirkland
30 Zoning Code are amended as set forth in Attachment A attached to this
31 ordinance and incorporated by reference.

- 32 KZC 90.30
- 33 KZC 90.45
- 34 KZC 90.50
- 35 KZC 115
- 36 KZC 142.15
- 37

38 Section 2. If any section, subsection, sentence, clause, phrase,
39 part or portion of this ordinance, including those parts adopted by
40 reference, is for any reason held to be invalid or unconstitutional by any
41 court of competent jurisdiction, such decision shall not affect the validity
42 of the remaining portions of this ordinance.

43 Section 3. To the extent the subject matter of this ordinance is
44 subject to the disapproval jurisdiction of the Houghton Community
45 Council, this ordinance shall become effective within the Houghton
46 Community Municipal Corporation only upon approval of the Houghton
47 Community Council or the failure of said Community Council to
48 disapprove this ordinance within 60 days of the date of the passage of
49 this ordinance.

50
51 Section 4. Except as provided in Section 3, this ordinance shall
52 be in force and effect five days from and after its passage by the
53 Kirkland City Council and publication pursuant to Section 1.08.017,
54 Kirkland Municipal Code in the summary form attached to the original
55 of this ordinance and by this reference approved by the City Council.

56
57 Section 5. A complete copy of this ordinance shall be certified
58 by the City Clerk, who shall then forward the certified copy to the King
59 County Department of Assessments.

60
61 Passed by majority vote of the Kirkland City Council in open
62 meeting this _____ day of November, 2020.

63
64 Signed in authentication thereof this _____ day of November,
65 2020.

Penny Sweet , Mayor

Attest:

Kathi Anderson, City Clerk

Approved as to Form:

Kevin Raymond, City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4739

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING AND LAND USE AND AMENDING THE KIRKLAND ZONING CODE CHAPTERS 90, 115, AND 142, ORDINANCE 3719 (AS AMENDED), AND APPROVING A SUMMARY FOR PUBLICATION, FILE NO. CAM20-00334.

SECTION 1. Amends Chapters 90, 115, and 142 of the Kirkland Zoning Code.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Provides that the effective date of the ordinance is affected by the disapproval jurisdiction of the Houghton Community Council.

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.

SECTION 5. Establishes certification by City Clerk and notification of King County Department of Assessments.

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 _____, 2020.

I certify that the foregoing is a summary of Ordinance 4739 approved by the Kirkland City Council for summary publication.

Kathi Anderson, City Clerk

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 Director Decision</u>	KZC 90.45
Programmatic Permits – Public Agency and Public Utility	Planning Official Decision or Planning Director Decision – 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 90.45 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 **by the Planning Director** using ~~Process I, pursuant to Chapter 145-KZC.~~
3. Decisional Criteria – The Planning Director 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
 - 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 **by the Planning Director** ~~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.

Chapter 115 – MISCELLANEOUS USE DEVELOPMENT AND PERFORMANCE STANDARDS

Sections:

- 115.05 User Guide
- 115.07 Accessory Dwelling Units
- 115.08 Accessory Structure (Detached Dwelling Unit Uses Only)
- 115.10 Accessory Uses, Facilities and Activities
- 115.15 Air Quality Regulations
- 115.20 Animals in Residential Zones
- 115.23 Common Recreational Space Requirements for Certain Residential Uses
- 115.24 Cross Kirkland Corridor/Eastside Rail Corridor – Supplemental Development Standards for Adjoining Properties
- 115.25 Development Activity – Limitations On
- 115.33 Electric Vehicle Infrastructure
- 115.35 Erosion and Sedimentation Regulation
- 115.40 Fences
- 115.42 Floor Area Ratio (F.A.R.) Calculation for Detached Dwelling Units in Low Density Residential Zones and Attached Dwelling Units in PLA 3C
- 115.43 Garage Requirements for Detached Dwelling Units in Low Density Zones
- 115.45 Garbage and Recycling Receptacles and Enclosures – Storage Space, Placement and Screening
- 115.47 Loading and Service Areas Placement and Screening
- 115.50 Glare Regulation
- 115.55 Heat Regulation
- 115.59 Height Regulations – Calculating Average Building Elevation (ABE)
- 115.60 Height Regulations – Exceptions
- 115.65 Home Occupations
- 115.80 Legal Building Site
- 115.85 Lighting Regulations
- 115.87 Lot Size Flexibility
- 115.90 Calculating Lot Coverage
- 115.95 Noise Regulations
- 115.100 Odor
- 115.105 Outdoor Use, Activity and Storage
- 115.107 Public Utility, Electrical Transmission Lines
- 115.110 Radiation
- 115.115 Required Yards
- 115.120 Rooftop Appurtenances
- 115.122 Rooftop Amenities and Rooftop Common Rooms
- 115.125 Rounding of Fractions of Dwelling Units
- 115.135 Sight Distance at Intersections
- 115.136 Size Limitations for Structures Abutting or Within Low Density Zones and Abutting Low Density Uses in PLA 17
- 115.137 Solar Collectors in Residential Zones
- 115.138 Temporary Construction Staging for Public Projects**
- 115.139 Temporary Government Facilities**
- ~~115.138~~**40** Temporary Storage Containers
- ~~115.140~~**1** Temporary Trailers for Construction and Real Estate Sales Offices
- 115.142 Transit Shelters and Centers, Public
- 115.150 Vehicles, Boats and Trailers – Size in Residential Zones Limited
- 115.155 Marijuana Retail Business – Buffer Requirements from Licensed Child Care Centers (*not effective within the Houghton Community Municipal Corporation*)

115.138 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, subject to the following:

- a. The approval shall establish standards that minimize site impacts, including but not limited to tree and soil protection consistent with KZC Chapter 95;**
- b. City contact information shall be posted on site; and**
- c. All staging equipment and materials must be removed, and the site restored to its previous condition, immediately upon completion of the associated project.**

115.139 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.**

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.