



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

**To:** Kurt Triplett, City Manager

**From:** Adam Weinstein, Planning & Building Director  
Stephanie Croll, Senior Assistant City Attorney  
Katie Hogan, Environmental Program Coordinator

**Date:** November 30, 2023

**Subject:** Kirkland Zoning Code Chapter 95 Amendments, CAM18-00408

## **RECOMMENDATION**

- Hold a public hearing on December 12, 2023, to receive public testimony on the proposed amendments to Kirkland Zoning Code (KZC) Chapter 95, which are intended to improve clarity and application of provisions related to tree protection during redevelopment.
- Deliberate on the proposed amendments included in the attached Ordinance O-4865. It is recommended that City Council review and adopt O-4865 at the December 12, 2023, City Council meeting.

## **BACKGROUND**

The City Council adopted Ordinance O-4786 on March 3, 2022, which included substantive amendments to Kirkland Zoning Code, Chapter 95 – Tree Management and Required Landscaping (KZC 95). On May 17, 2022, Ordinance O-4786 was appealed to the Growth Management Hearings Board by, among others, the Master Builders Association of King and Snohomish Counties. Following the appeal, the Master Builders Association requested that the City enter into discussions to see if the two sides could reach a settlement agreement, and the City agreed to do so. Beginning in November 2022, City staff began settlement negotiations with the appellants. Through those negotiations, City staff developed the minor amendments to KZC 95 recommended herein, as well as the creation of pre-submittal documents to increase clarity and certainty regarding KZC 95 for both applicants and the City's Planning staff.

The main objective of the proposed amendments to KZC 95 are to eliminate ambiguities and simplify language, without introducing substantial alterations to existing policy.

By providing clearer guidelines and eliminating potential points of confusion, the proposed amendments aim to promote a transparent and predictable development process.

Objectives of the amendments:

1. Improve pre-submittal conference procedures to allow applicants to obtain an early understanding of required tree retention and allowable tree removal.
2. Improve readability and clarity of code provisions throughout section KZC 95.30 - *Tree Retention Associated with Development Activity*, primarily focusing on language refinement and sentence restructuring.

## **PROPOSED AMENDMENTS**

The proposed amendments to KZC 95 aim to improve clarity and application of the City's tree code for redevelopment sites. The overarching goal is to improve certainty for applicants planning to redevelop properties located within the City, so they have a strong understanding of tree retention and allowable tree removal during early stages of project feasibility. These amendments specifically aim to provide more clarity and certainty regarding the retention and allowed removal of High Retention Value (HRV) trees.

HRV trees are defined as follows per KZC 95.10.17(h)(1):

- a) Grove: a group of three or more viable regulated trees with overlapping or touching crowns that are located on a proposed development site; one of which is located in a required yard;
- b) Landmark tree: a regulated tree with a minimum 26-inch diameter at breast height (DBH); and
- c) A viable tree with any portion of the trunk located in a required yard, land use buffer, and/or common open space.

Proposed code amendments are shown below as underlined and ~~strike-through~~ text. An explanation of each amendment and what it aims to achieve is also provided. Current code language is shown in italics.

**KZC 95.05(2)(f)** - *Balance tree protection with other major City-wide interests, including, but not limited to, provision of housing opportunities;*

Rationale for amendment: The preservation and protection of trees is a significant city interest; however, the City also recognizes the pressing need for housing and diverse housing choices.

**KZC 95.30 (paragraph 2)** - *This section includes provisions that establish tree retention priorities, incentives, and variations to development standards in order to retain viable trees on development sites. Applicants for a development permit are encouraged to confer with City staff as early in the design process as possible so that the applicable tree retention and planting principles found in this chapter can be incorporated into the design of the subject property. The Planning Official and the applicant shall work in good faith to find reasonable solutions. Applicants may use the pre-submittal procedures in subsection 7 to obtain an early understanding of how tree retention, protection, and planting standards of this Code apply to a particular property and proposed project.*

Rationale for amendment: Staff wants to incorporate reference to new pre-submittal procedures. See discussion on proposed new subsection 7, below, for a more detailed explanation.

**KZC 95.30(2) - Tree Retention Plan Review Authority.** *The authority to make decisions under this chapter resides with the Planning Official for building permit; land surface modification permit; demolition permit; and/or with the applicable review authority for Design Review, Process I, IIA, or IIB, described in Chapters 142, 145, 150 and 152 KZC. To retain regulated trees, the City shall review for consistency with the provisions set forth in this chapter.*

**Amended paragraph #1:** *Based on the tree retention plan information submitted by the applicant, ~~and the subject to the Planning Official's evaluation of the trees relative to the proposed development on the subject property~~ verification of accuracy, the Planning Official shall designate trees on the subject property as viable high retention value trees, including landmark trees and groves, and/or trees with a moderate retention value ~~based on using the definitions provided in~~ KZC 95.10, Definitions, ~~for application towards the regulations in this chapter.~~*

**Amended paragraph #2:** *The City does not require tree retention efforts that either (i) would reduce maximum allowed density, number of allowed lots, maximum allowed floor area ratio (FAR) or lot coverage, (ii) ~~or~~ preclude the ability to construct ADUs consistent with KZC 115.07, or (iii) ~~that~~ preclude required access and utility connections.*

Rational for amendment (paragraph #1): The proposed amendments align with the City's current procedures for reviewing Tree Retention Plans and designating HRV trees (i.e., the applicant submits a plan with an arborist report and the City conducts a site inspection to verify information is accurate and consistent with KZC 95 definitions and provisions). The proposed amendments better clarify this process and eliminate subjectivity by explaining the review process.

Rationale for amendment (paragraph #2): Improves readability of the sentence to avoid misinterpretation by clarifying that if *any one* of the conditions set forth in subsections (i), (ii), or (iii) are met, then the City would authorize HRV tree removal.

**KZC 95.30(3)(a)(4) - Tree Retention Plan Requirements.** *Tree retention plans shall contain the following information, unless waived by the Planning Official:*

**Amended paragraph #4:** *DBH of all existing regulated trees, including the approximate DBH of regulated trees on adjoining properties that appear to have CRZs extending onto the subject property;*

Rationale for amendment: This creates clarity and consistency with other sections of KZC 95 which also require that regulated trees on adjoining properties be included in the submittal information. The language specifically allows for identification of the "approximate DBH" of adjoining trees in the event that applicants cannot gain access to adjacent properties.

**KZC 95.30(4) - Development of Single-Family Dwellings, Short Plats, Subdivisions, Two/Three-Unit Homes, Cottage/Carriage Dwellings, and Accessory Structures. Tree retention plan review and approval shall be based on compliance with the following provisions:**

a. *High Retention Value Trees. In order to retain trees located in required yards, land use buffers, and/or common open spaces, and to retain landmark trees and groves located anywhere on the subject property, the applicant shall ~~pursue~~ consider, and the Planning Official (or Public Works Official, where applicable) is authorized to require, compliance with the following standards:*

Rationale for amendment: Staff changed “pursue” to “consider” aligning with the original intent of this provision. Applicants are required to *consider* applying site plan alterations, arboricultural methods, and variations to development standards when developing site plans to maximize HRV tree retention, and such measures may then be required by the Planning Official. Because this review is occurring prior to issuance of permits, and before any construction begins on the site, the use of “consider” is more appropriate than “pursue.”

- 1) Site Plan Alterations. *Site plan alterations, including the following:*
  - a) *Shift or flip (mirror) the location of proposed building footprints and driveways;*
  - b) *Selection of the required front yard on corner lots in the RSA and RSX zones and selection of the required side yard to meet the 15-foot total required in RS zones;*
  - c) *Shift the building footprint on the lot to utilize the variations to development standards allowed in subsection (3) of this section;*
  - d) *Relocate utilities when feasible, taking into account gravity and location of existing mains;*
  - e) *Adjust deck, patio, and path designs;*
  - f) *Avoid rockery/retaining walls located within CRZs TPZs to maintain existing grades.*
- 2) *Arboricultural Methods. ~~The applicant shall employ a~~ Arboriculture methods to retain trees, such as, but not limited to, air excavations, boring under roots instead of trenching within TPZs for utilities less than two inches diameter, and using additional CRZ protection per KZC 95.32.*
- 3) *Variations to Development Standards. ~~The applicant shall pursue the following variations and the Planning Official (or Public Works Official, where applicable) is authorized to require these variations to development standards~~ Variations to development standards, such as, but not limited to:*
  - a) *Reduce required front yard by up to five feet;*
  - b) *Reduce required rear yards by up to five feet where the rear yard is adjacent to an access easement, tract, or alley;*
  - c) *Allow variations to the garage requirements of KZC 115.43(3);*
  - d) *Allow variations to increase the maximum lot coverage by not more than 10 percent where necessary to extend access due to building footprint location while ensuring that the driveway width does not exceed a width of 20 feet;*

Rationale for amendment: The above changes to subsections 1, 2 and 3 are non-substantive and improve the readability of this code section. The addition of

“increase” under KZC 95.30(4)(a)(3)(d) clarifies the original intent of this code provision, which is to allow applicants to increase the maximum lot coverage in order to shift the home layout to optimize HRV tree retention.

**Note:** Additional amendments are proposed to KZC 95.30 subsection 4(b) and subsection 5(a) that are the same as those shown above for KZC 95.30(4) and aim to improve readability.

**KZC 95.30(6)** - *The Planning Official ~~may~~ will authorize the removal of high retention value trees otherwise required by this chapter to be retained; provided, that the following conditions are met:*

*a. After considering ~~utilizing~~ the required site plan alterations and allowed variations to development standards listed in KZC 95.30(4) and (5), there is no practicable or feasible alternative development proposal that results in fewer tree removals; or*

*b. Retention of such tree or trees would either (i) reduce maximum allowed density, number of allowed lots, maximum allowed floor area ratio (FAR) or lot coverage, (ii) preclude the ability to construct ADUs consistent with KZC 115.07, or (iii) preclude required access and utility connections.*

Rationale for amendment: The change from “may” to “will” in the introductory paragraph of this section helps to reduce subjectivity for applicants. This aligns with the original intent of this code section, which was that the City would identify final conditions under which the City will authorize HRV tree removal.

Subsection (a) replaces “utilizing” with “considering.” Once again, “consider” is more appropriate than “utilize,” because applicants would not implement these development standards during the plan review process, but instead would review and consider them to determine the feasibility of implementation.

Subsection (b) restates the existing development guarantees that are listed above under KZC 95.30(2). They are repeated again under KZC 95.30(6) to clarify that HRV tree removal will be authorized if an applicant can demonstrate that these development guarantees cannot be met absent removal.

**Section (7) of KZC 95.30 is entirely new:**

**KZC 95.30(7)** - *Pre-Submittal Procedures. Applicants may use the pre-submittal procedures in this section to obtain an early understanding of how tree retention, protection, and planting standards of this Chapter apply to a particular property and proposed project.*

a. Checklist. The Planning and Building Department shall maintain a publicly-accessible checklist for applicants identifying the information needed and process for the City to make a preliminary determination whether a proposal complies with this Chapter as provided in subsection 7(c).

1) As part of a pre-submittal meeting for a Process I, IIA, or IIB application, or as a separate pre-submittal meeting, an applicant should submit prior to the meeting the completed checklist, together with a preliminary tree inventory and/or survey, and proposed site plan. Applicants are encouraged to submit accurate information that identifies existing Landmark Trees and should specify trees proposed for retention and removal with a brief narrative discussion of why the applicant selected the trees for removal.

2) The Planning Official will review the checklist and documentation provided by the applicant at the pre-submittal meeting. The Planning Official shall determine if the applicant needs to submit additional information specified in subsection 1 above.

b. Site visit. The applicant may request a pre-submittal site visit. If a site visit is conducted, then the applicant may incur additional pre-submittal fees.

c. Findings. Following the pre-submittal meeting, and after all information submitted by the applicant has been reviewed, the Planning Official shall advise the applicant, in writing, of their preliminary determination and this document will be saved with the associated pre-submittal case file. This preliminary determination shall address tree retention, protection, and planting standards of this Chapter as applied to the applicant's property and proposed project, and the applicant may use this preliminary determination in preparing an application. This preliminary determination is not a final land use decision under the Land Use Petition Act and new or changed conditions could impact this determination. The Planning Official will issue the preliminary determination consistent with the target timelines published by the Planning and Building Department and will use best efforts to ensure a timely review following the submittal of the required documents pursuant to subsection (a) of this section.

Rationale for amendment: Subsection 7 is a new section to KZC 95. The purpose of this section is to provide more transparency and explanation of the City's pre-submittal conference procedures and to provide applicants with more certainty on allowable tree removal during development of an initial project concept. The procedures outlined in this section align with the City's current pre-submittal review process and will not require a substantially higher workload for City staff.

By outlining these procedures in the code, applicants would be better able to anticipate what information should be provided to the City during a pre-submittal conference. The goal is to inform applicants on what project information is required, such as tree sizes, locations, and proposed improvements, that will allow the Planning Official to provide an accurate preliminary determination on

allowable tree removal. By doing so, applicants are able to make informed decisions during the feasibility phase of their development process, such as deciding whether to purchase property for redevelopment.

This section states that the City will use “best efforts” to ensure a “timely” review following the pre-submittal conference. This is consistent with current City practice and provides assurance to applicants that the City will take reasonable steps to review and provide comments on pre-submittal documents in a timely manner, according to the average timelines published by the Planning and Building Department for different types of permits.

### Supplemental Documents

In addition to the proposed code amendments, the City has prepared supplemental documents to be utilized by applicants to gain a better understanding of allowable tree removals and walk applicants through the requirements set forth in KZC 95.

These documents include a Tree Retention Plan Pre-Submittal Conference Checklist (Pre-Submittal Checklist) and associated Pre-Submittal Conference Comment Letter (Comment Letter). The Pre-Submittal Checklist includes a concise list of information applicants are highly encouraged to submit to the City during the pre-submittal stage of a project before any building permit applications have been submitted. This checklist includes information about existing trees such as locations, sizes, and viability ratings as well as preliminary plans showing proposed lot layouts, house footprints, access, and utilities.

The Planning Official will then review this information at the pre-submittal conference and discuss whether there are additional measures the applicant must consider to retain HRV trees before the City can authorize removal. By having this information at the early stage of a project, the applicant can decide whether to move forward with redevelopment of a site (or property purchase). Other anticipated benefits are reduced correction cycles during permit review related to urban forestry and tree retention. While the information received from the Planning Official at the pre-submittal conference is non-binding, the applicant can anticipate the same or similar determination during the permit review stage as long as site plans and impacts to HRV trees have not changed.

The Comment Letter is an official letter the City will provide to the applicant following the pre-submittal conference which summarizes what was discussed at the meeting and whether the proposal meets the criteria of KZC 95. The applicant can then submit this letter with their building permit submittal to avoid any confusion during the permit review process if a different Planning Official is assigned to their project.

The final supplemental document is a High Retention Value Tree Checklist (HRV Checklist). This is an online interactive form that applicants are required to submit along with their building permits if HRV trees exist within the project area. This form allows applicants to select which of the site plan alterations and variations to development standards under KZC 95.30(4) or (5) were applied to the project, or to provide the opportunity to explain site constraints that make utilizing these standards infeasible. The goal of this HRV Checklist is to reduce subjectivity and provide a streamlined checklist that applicants can use when considering site design to optimize tree retention.

Additionally, this form will reduce City comments/corrections issued by the Planning Official during permit review that pertain to whether the applicant has pursued these standards to retain HRV trees.

**PUBLIC OUTREACH AND ENVIRONMENTAL REVIEW**

In preparation for the public hearing, City staff engaged with representatives of the Petitioners who appealed the City's Tree Code Amendments to the Growth Management Hearings Board, in addition to the Finn Hill Neighborhood Alliance, to review the proposed code amendments and receive comments and input. Additional outreach efforts included public noticing on November 28, 2023 as required per KZC 160.40, publishing the proposed amendments on the City's Tree Code Amendment website, sending courtesy notices to relevant listservs through GovDelivery, and announcing the public hearing and proposed amendments through the *This Week in Kirkland* newsletter. Because the proposed amendments are minor in nature, staff prepared an Addendum to comply with the State Environmental Policy Act. The Addendum supports the conclusion that the proposed amendments would not result in significant environmental effects.

**NEXT STEPS**

Council should hold a public hearing on December 12, 2023, deliberate over the proposed amendments as set forth in Ordinance O-4865, and make a decision on whether to adopt the amendments at the December 12, 2023, City Council meeting.

**ENCLOSURES**

Ordinance O-4865  
Exhibit A KZC 95 Amendments

cc: File Number CAM18-00408