

ORDINANCE NO. 4227

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING CHAPTER 19.36 OF THE KIRKLAND MUNICIPAL CODE REGARDING STREET TREES AND TREES ON CITY PROPERTY.

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

WHEREAS, in regular public meeting the City Council considered the environmental documents received from the responsible official,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Kirkland as follows:

Section 1. Text Amended: The following specific portions of the text of Chapter 19.36 – Street Trees and Trees on City Property of the Kirkland Municipal Code is amended to read as follows:

As set forth in Attachment A attached to this ordinance and incorporated by reference.

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

Section 3. This ordinance shall be in full force and effect on April 1, 2010. Pursuant to Section 1.08.017 Kirkland Municipal Code, publication of this ordinance shall be in the summary form attached to the original of this ordinance and by this reference approved by the City Council, as required by law.

PASSED by majority vote of the Kirkland City Council in open meeting this 15th day of December, 2009.

SIGNED IN AUTHENTICATION thereof this 15th day of December, 2009.

  
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Mayor

Attest:

Kathie Anderson  
City Clerk

Approved as to Form:

Oliver Anderson  
City Attorney

Kirkland Municipal Code

**Chapter 19.36**  
**PENALTIES FOR VIOLATIONS - STREET TREES AND**  
**TREES ON CITY PROPERTY**

Sections:

- ~~19.36.010—Purpose.~~
- ~~19.36.020—Definitions.~~
- ~~19.36.030—Alteration of street trees without prior approval is prohibited.~~
- ~~19.36.035—Standards and criteria for approval to remove street tree.~~
- ~~19.36.040—Removal or alteration of trees in public parks and other city property prohibited.~~
- ~~19.36.050—19.36.010 Civil penalties for violations.~~
- ~~19.36.060—19.36.020 Issuance of notice of violation.~~
- ~~19.36.070—19.36.030 Issuance of notice of civil infraction.~~
- ~~19.36.080—19.36.040 Civil infraction appeal procedures.~~
- ~~19.36.090—19.36.050 Criminal penalties for willful violations.~~
- ~~19.36.110—19.36.060 Remedies not exclusive.~~

**~~19.36.010 Purpose.~~**

~~The purpose of this chapter is to regulate, preserve and protect street trees, trees in public parks and trees on other city property.~~

**~~19.36.020 Definitions.~~**

~~Terms used in this title shall have the following meanings:~~

~~(a) “Hazard tree” is any tree with structural defects, disease, or both, which makes it subject to a high probability of failure in the opinion of a qualified professional retained or approved by the city.~~

~~(b) “Nuisance tree” is a tree which is causing physical damage to property or has been damaged by past maintenance practices, and for which accepted arboricultural practices cannot correct the problem.~~

~~(c) “Street tree” is a tree located within the street right-of-way; provided, that if the trunk of the tree straddles the boundary line of the street right-of-way and the abutting property, it shall be considered to be on the abutting property and subject to the provisions of the Kirkland Zoning Code.~~

**~~19.36.030 Alteration of street trees without prior approval is prohibited.~~**

~~Routine maintenance of street trees is the responsibility of the abutting property owner except in the city’s central business district (CBD) zones and in any other specific right-of-way that may be identified by the city. Except for routine maintenance, it is unlawful for any person to prune, trim, modify, alter or damage a street tree without the prior approval of the director of public works or his or her designee; provided, that the city and utility crews may perform routine pruning and maintenance of street trees; and provided further, that an abutting property owner may perform routine pruning and maintenance in accordance with any landscape maintenance agreement or contract with the city. An application to prune, trim, modify or alter a street tree shall be granted only if the proposed action will improve the health and appearance of the tree. An application to prune, trim, modify or alter a street tree~~

~~shall not be granted if the sole or primary purpose of the proposed action is view enhancement.~~

**~~19.36.035 Standards and criteria for approval to remove street tree.~~**

~~An abutting property owner may apply for permission to remove a street tree by filing a written application with the department of public works. An application to remove a street tree shall be reviewed by the director of public works, or his or her designee. The director shall consider the following factors in determining whether to grant or deny the application: (1) whether the tree is a hazard tree or nuisance tree; (2) the location of the tree in the right-of-way; (3) the size and type of tree and whether it constitutes a "significant tree" as defined in the Kirkland Zoning Code; (4) whether the tree is now, or may be in the future, part of the city's plans for the right-of-way; (5) whether the property owner is willing to mitigate the consequences of removal of the tree by planting a new tree or trees in a more suitable location; and (6) any other factor that the director deems relevant or appropriate. Any failure by the applicant or his or her agents to adhere to conditions imposed on tree removal by the city under this chapter shall constitute a violation of this chapter and is subject to enforcement under this chapter.~~

**~~19.36.040 Removal or alteration of trees in public parks and other city property prohibited.~~**

~~It is unlawful for any person to remove, prune, trim, modify, alter or damage a tree in a public park or on any other city property; provided, that the city may perform routine pruning and maintenance of such trees and take any actions it deems necessary with respect to trees on city property.~~

**~~19.36.050-010 Civil penalties for violations.~~**

(a) The director of public works or his or her designee shall be responsible for enforcing the provisions of this chapter with respect to street trees. The director of parks and community services or his or her designee shall be responsible for enforcing the provisions of this chapter with respect to city parks and other city property.

(b) When taking enforcement action under this chapter, the city's primary goal, if feasible, shall be full restoration of the area where the violation occurred. Each tree removed, pruned, trimmed, modified, altered or damaged in violation of this chapter shall constitute a separate violation for the purpose of assessing penalties under this chapter. Violations shall be deemed to be continuing in nature until the area where the violations occurred is fully restored to the condition it was in prior to the violations; provided, that the city, in its discretion, may suspend the accrual of daily penalties if the property owner is actively and diligently implementing a city-approved restoration plan. The costs of restoration shall not be more than the appraised value of the significant trees removed, according to the most recent edition of the Guide for Plant Appraisal.

(c) In addition to the costs of restoration, the amount of the monetary penalty per day for violation is as follows:

- (1) First violation: two hundred dollars.
- (2) Second violation: four hundred dollars.
- (3) Third violation: six hundred dollars.

(d) Payment of a monetary penalty under this chapter does not relieve a person of the duty to correct the violation as ordered by the applicable department director. (Ord. 3866 § 1 (part), 2002)

**19.36.060-020 Issuance of notice of violation.**

If the applicable department director, or his or her designee, determines that any person has violated this chapter, he or she may issue a notice of violation. The notice of violation shall state:

- (a) The name and address of the person to whom the notice of violation is directed;
- (b) The street address or a description of the land sufficient for identifying where the violation occurred;
- (c) A description of the violation and a reference to the provision of this chapter that has been violated;
- (d) A statement of the action required to be taken to correct the violation and a date and time by which the correction is to be completed no less than seven days after issuance of the notice of violation; and
- (e) A statement of the monetary penalty for each day on which the violation continues after the date set for correction.

The city shall serve the notice of violation on the person charged with violating this chapter personally or by certified mail. (Ord. 3866 § 1 (part), 2002)

**19.36.070-030 Issuance of notice of civil infraction.**

If a violation is not corrected in the time specified in the notice of violation, the city may issue a notice of civil infraction to the person charged with violating this chapter. The notice of civil infraction shall include the following:

- (a) The name and address of the person to whom the notice of civil infraction is directed;
- (b) The street address or a description of the land sufficient for identifying where the violation occurred;
- (c) A description of the violation and a reference to the provision of this chapter that has been violated;
- (d) A statement that the monetary penalty in the amount per day for each violation, as set forth in the notice of violation, is assessed against the person to whom the notice of civil infraction is issued; and
- (e) A statement that the person to whom the notice of civil infraction was directed must complete correction of the violation and may pay the monetary penalty imposed to the city or may appeal the notice of civil infraction as provided in this chapter.

A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless appealed as provided in this chapter. The city shall serve the notice of violation on the person charged with violating this chapter personally or by certified mail. (Ord. 3866 § 1 (part), 2002)

**19.36.080-040 Civil infraction appeal procedures.**

(a) A person to whom a notice of civil infraction is directed may appeal the determination that a violation exists or the amount of any monetary penalty to the hearing examiner. A written notice of appeal must be filed with the city within seven calendar days from the date of service of the notice of civil infraction. The office of the hearing examiner shall give notice of the hearing of the appeal no less than seventeen calendar days prior to the hearing date.

(b) The hearing examiner shall conduct a hearing on the appeal pursuant to the rules of procedure provided by the Administrative Procedure Act, Chapter 34.05 RCW, as well as any procedural rules and guidelines promulgated by the hearing examiner. The city and the

appellant may participate as parties in the proceedings and each may call witnesses. The city shall have the burden of proving by a preponderance of the evidence that a violation has occurred.

(c) The hearing examiner shall determine whether the city has proven by a preponderance of the evidence that a violation has occurred and shall affirm, vacate, suspend or modify the amount of any monetary penalty with or without written conditions. The monetary penalty does not accrue during the pendency of the appeal; provided, that if the hearing examiner finds that the appeal is frivolous or intended solely to delay compliance, he or she may impose a daily monetary penalty from the date of service of the notice of civil infraction. The hearing examiner's decision shall be the city's final administrative ruling. The hearing examiner shall mail a copy of his decision to the appellant by certified mail, postage prepaid, return receipt requested.

(d) The monetary penalty is the personal obligation of the person to whom the notice of civil infraction was directed. Any monetary penalty assessed shall be paid to the city clerk within seven days of issuance of the notice of civil infraction, or, if an appeal was filed, within seven days of the hearing examiner's decision. The city attorney is authorized to collect the monetary penalty by use of appropriate legal remedies, the seeking or granting of which shall not stay or terminate accrual of additional per-day monetary penalties so long as the violation continues. (Ord. 3866 § 1 (part), 2002)

**19.36.~~090-050~~ Criminal penalties for willful violations.**

Any willful violation of this chapter is a gross misdemeanor punishable by imprisonment for not more than one year, or by a fine of not more than five thousand dollars, or both. The city may also seek criminal restitution for all costs and expenses incurred in replacing or restoring any trees and landscaping that were damaged or removed as a result of the violation. (Ord. 3866 § 1 (part), 2002)

**19.36.~~110-060~~ Remedies not exclusive.**

The remedies prescribed in this chapter are in addition to all other remedies provided for or authorized by law, including, but not limited to, RCW 64.12.030 which provides for treble damages for unlawful removal of trees. (Ord. 3866 § 1 (part), 2002)

PUBLICATION SUMMARY  
OF ORDINANCE NO. 4227

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING CHAPTER 19.36 OF THE KIRKLAND MUNICIPAL CODE REGARDING STREET TREES AND TREES ON CITY PROPERTY.

SECTION 1. Provides that Kirkland Municipal Code Chapter 19.36 relating to street trees and trees on public property is amended in various respects, and that the amendments are attached to the Ordinance as Attachment A.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. 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 April 1, 2010.

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 15th day of December, 2009.

I certify that the foregoing is a summary of Ordinance 4227 approved by the Kirkland City Council for summary publication.

  
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City Clerk