

ORDINANCE O-4713

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING AND LAND USE AND AMENDING ORDINANCE 4551, CITY OF KIRKLAND ZONING CODE 90.30 and 90.180 REGARDING REASONABLE USE EXCEPTIONS, AND APPROVING SUMMARY FOR PUBLICATION, FILE NO. CAM19-00690.

1 WHEREAS, on March 22, 2019, the City Council adopted  
2 Resolution R-5368, adopting the 2019-21 Planning Work Program,  
3 which includes "Miscellaneous Code Amendments," one of which is  
4 amendments to the City's reasonable use regulations; and  
5

6 WHEREAS, Comprehensive Plan Policies E-1.2, E-1.3, E-1.6, E-  
7 1.12, and E-3.2, among others, seek to shape private development to  
8 protect the City's geologic, habitat, and hydrological functions; and  
9

10 WHEREAS, due to the workload of the Planning Commission  
11 and the desire by City Council to expeditiously amend the City's  
12 reasonable use regulations in order to protect critical environmental  
13 resources, the City Council on November 6, 2019 adopted Ordinance O-  
14 4702, establishing interim regulations to allow City Council to solely  
15 conduct the review of City Council-initiated amendments to the text of  
16 the Zoning Code; and  
17

18 WHEREAS, the City Council, following the distribution of public  
19 notice as required by RCW 35A.63.070, held a public hearing on the  
20 amendments proposal on December 10, 2019; and  
21

22 WHEREAS, pursuant to the State Environmental Policy Act  
23 (SEPA), an Addendum to the City of Kirkland 2015 Comprehensive Plan  
24 Update Draft and Final Environmental Impact Statement was filed for  
25 the amendments to the reasonable use regulations, indicating that no  
26 new environmental impacts would result and fulfilling environmental  
27 review requirements; and  
28

29 WHEREAS, the City Council finds it in the public interest to  
30 adopt revised reasonable use regulations which will reflect case law and  
31 reasonable development expectations on properties encumbered by  
32 critical areas and their buffers; and  
33

34 NOW, THEREFORE, BE IT ORDAINED by the City Council of the  
35 City of Kirkland as follows:  
36

37 Section 1. Zoning Code Amended: The following sections of the  
38 Kirkland Zoning Code are amended as set forth in Exhibit A to this  
39 ordinance and incorporated by reference:  
40

- 41 Section 90.30 – City Review Process
- 42 Section 90.180 – Reasonable Use Exception  
43

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

49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87


Section 3. Houghton Community Council: To the extent the subject matter of this ordinance is subject to the disapproval jurisdiction of the Houghton Community Council, this ordinance shall become effective within the Houghton Community Municipal Corporation only upon approval by the Houghton Community Council or upon failure of the Community Council to disapprove this ordinance within 60 days of the date of the passage of this ordinance.

Section 4. Effective Date: This ordinance shall be in full force and effect 5 days from and after its passage by the Kirkland City Council and publication pursuant to Kirkland Municipal Code 1.08.017, in the summary form attached to the original of this ordinance and by this reference approved by the City Council, as required by law. The City will continue to accept applications for Reasonable Use Exceptions and process them under the regulations in effect immediately prior to the effective date of this ordinance, provided that said applications have had a pre-submittal meeting within six months immediately prior to the application date as required by KZC 145.12. Any such applications shall be submitted by March 10, 2020 or will otherwise be considered under the regulations in effect at the time of application. Any applications submitted to the City prior to the effective date of this ordinance shall continue to be processed under the regulations in effect at the time of said application, provided that any such application shall be substantially complete pursuant to KZC 145.17 by no later than March 10, 2020. Further, any such application may be canceled pursuant to KZC 145.18 if an applicant fails to respond to any Department's written request for revisions, corrections, or additional information within 60 days of the written request.

Section 5. Ordinance Copy: A complete copy of this ordinance shall be certified by the City Clerk, who shall then forward the certified copy to the King County Department of Assessments.

Passed by majority vote of the Kirkland City Council in open meeting this 10th day of December, 2019.


Signed in authentication thereof this 10th day of December, 2019.

  
Penny Sweet, Mayor

Attest:

  
Kathi Anderson, City Clerk

Approved as to Form:

  
Kevin Raymond, City Attorney

Publication Date: 12/19/19

PUBLICATION SUMMARY  
OF ORDINANCE O-4713

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING AND LAND USE AND AMENDING ORDINANCE 4551, CITY OF KIRKLAND ZONING CODE 90.30 and 90.180 REGARDING REASONABLE USE EXCEPTIONS AND ITS SUMMARY, FILE NO. CAM19-00690.

SECTION 1. Provides amendments related to reasonable use exceptions to 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 and provides continued processing of applications already submitted under the prior ordinance.

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 10th day of December, 2019.

I certify that the foregoing is a summary of Ordinance O-4713 approved by the Kirkland City Council for summary publication.

  
Kathi Anderson, City Clerk

Publication Date: 12/19/2019

**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**

<b>Type of Action</b>	<b>City Review Process</b>	<b>Section</b>
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	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 Director – Process I, Chapter 145 KZC	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
Interrupted Buffer	Planning Official Decision	KZC 90.120
Reasonable Use Exception	Planning Director – Process I, Chapter 145 KZC; or <u>Hearing Examiner – Process IIA, Chapter 150 KZC (for extraordinary circumstances)</u>	KZC 90.180

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.

## **90.180 Reasonable Use Exception**

1. Purpose – The purpose of the reasonable use exception is to:

- a. Provide the City with a mechanism to approve limited use and disturbance of a critical area and critical area buffer when strict application of this chapter would deny all economically viable use of the subject property;
- b. Establish guidelines and standards for the exercise of this authority adjusted to the specific conditions of each subject property; and
- c. Protect the public health, welfare and safety of the citizens of Kirkland.

2. Reasonable Use – Reasonable use is a legal concept that has been articulated by federal and state courts in regulatory takings cases. Regulatory takings analysis begins with the premise that landowners do not have the right to use their property in a manner that injures the public interest. However, when not injuring the public interest, a landowner should not be forced to solely bear the economic burden of conferring a benefit upon the public, the cost of which rightfully should be spread over the entire community. When a regulation restricts an owner's use of property but advances legitimate public interests, such as the protection of critical areas and buffers as required by the Growth Management Act, RCW 36.70A.130(1), the City evaluates the potential for takings using the following three factors: (1) the regulation's economic impact on the property, (2) the extent of the regulation's interference with investment-backed expectations, and (3) the character of the government action. In a takings case, the decision maker must balance the public benefit against the owner's interests by considering the nature of the harm the regulation is intended to prevent, the availability and effectiveness of alternative measures, and the economic loss borne by the owner. Public benefit factors include the seriousness of the harm to be prevented, the extent to which the land involved contributes to the harm, the degree to which the regulation solves the problem, and the feasibility of less oppressive solutions.

3. Reasonable Use Process – If the strict application of this chapter would preclude all reasonable use of the subject property, an owner of the subject property may apply for a reasonable use exception. The application shall be considered under Process I of Chapter 145 KZC.

4. Submittal Requirements – As part of the reasonable use exception request application the applicant shall submit a critical area report pursuant to KZC 90.110, prepared by a qualified critical area professional approved by the City, and also fund peer review of this report by the City's consultant. The report shall include the following:

- a. For a wetland, the additional report information requirements specified in KZC 90.110(5). For a stream, the additional report information requirements specified in KZC 90.110(6);
- b. An analysis of whether any other reasonable use with less impact on the critical area and critical area buffer is possible;
- c. Site design and construction staging of the proposal shall have the least impact to the critical area and critical area buffer;
- d. A site plan showing:
  - 1) The critical area, critical area buffer and structure setback required by this chapter;

2) The proposed area of disturbance both on and off the subject property pursuant to the disturbance area limitations of subsection (5)(c) of this section;

3) ~~A~~The footprint of all proposed structures and improvements meeting the conditions of subsection (5) of this section, including;

a) Building footprints, including garages;

Buildings;

b) ~~P~~Garages and parking areas;

c) Driveways;

d) Paved surfaces, such as walking paths;

e) Patios, decks and similar structures;

f) Utility and storm water improvements;

g) Yard landscaping;

h) Retaining walls and rockeries;

e. A description of protective measures that will be undertaken, such as siltation curtains, compost berms and other siltation prevention measures, and a schedule of~~ing~~ the construction activity to avoid interference with wildlife and fisheries rearing, nesting or spawning activities;

f. An analysis of the impact that the proposed development would have on the critical area and the critical area buffer;

g. An illustration of hHow the proposal mitigates for impacts to the critical areas and critical area buffers;

h. An illustration of hHow the proposal minimizes to the greatest extent possible net loss of critical area functions;

i. An analysis of wWhether the improvement is located away from the critical area and the critical area buffer to the greatest extent possible; and

j. Such other information or studies as the Planning Official may reasonably require.

5. Allowed Use and Maximum Disturbance Limits – Allowed uses and maximum disturbance limits under a reasonable use exception are as follows:

a. The following land uses may be proposed with a reasonable use exception:

1) Residential zones – one (1) single-family dwelling with a footprint no larger than 750 square feet and a maximum gross floor area of 1,500 square feet, including cantilevered areas, and attached garage not to exceed a footprint and gross floor area of 250 square feet. If no garage is provided, the square footage of garage uses cannot be allocated to the square footage allowances for the primary residence;

2) Commercial or Office zones – office or retail space, subject to the following parameters, with a footprint no larger than 750 square feet and a maximum gross floor area of 1,500 square feet, including cantilevered areas, and attached garage not to exceed a footprint and gross floor area of 250 square feet. If no garage is provided, the

square footage of garage uses cannot be allocated to square footage allowances for the commercial or office use:

- a) An office use, except veterinary offices with outdoor facilities; and
- b) A limited retail establishment, excluding restaurants and taverns, gas stations, vehicle or boat sales, service or repair, car washes, drive-thru, outdoor seating area and storage.
- c) In order to limit disturbance and impacts to the critical area and buffer these uses shall:

(1) Locate parking on the opposite side of the building from the critical area; and

(2) Limit hours of operation to between 8:00 a.m. and 11:00 p.m.

b. For purposes of this section, "site" means the subject property, abutting lots, and adjacent right-of-way. The maximum amount of site area that may be disturbed by structure placement and all land alteration associated with the proposed development activity, including but not limited to land surface modification, utility installation, and installation of decks, driveways, paved areas, and landscaping, shall not exceed the following limits:

1) The maximum amount of disturbance shall be limited to building footprints, the minimum walkways and driveways needed to access the property, associated utilities, and a 10-foot buffer around the building footprint. The location of allowable disturbance shall be that which will have the least impact on the critical area and the critical area buffer given the characteristics and context of the site, critical area, and critical area buffer.

2) If the subject property contains 6,000 square feet of area or less, the maximum amount of disturbance shall not exceed 50 percent of the site.

3) If the subject property contains more than 6,000 square feet but less than 30,000 square feet, the maximum amount of disturbance shall not exceed 3,000 square feet.

4) For the subject property containing 30,000 square feet or more, the maximum amount of disturbance shall be between 3,000 square feet and 10 percent of the lot area, to be determined by the City on a case-by-case basis.

5) Public improvements within the right-of-way required by Chapter 110 KZC (for example, required curb, gutter and sidewalk improvements) are not counted in the maximum amount of disturbance. The City shall allow or require modifications to the public improvement standards that minimize the impact to the critical area and buffer and any impacts associated with required public improvements shall be mitigated by the applicant.

6) The portion of a driveway located within an improved right-of-way is not counted in the maximum amount of disturbance. However, a driveway or any other private improvement located in an unimproved right-of-way shall be counted in the maximum amount of disturbance. See subsection (8)(a)(2) of this section for calculating the disturbance of on-site driveways.

The applicant shall fund peer review of the proposed maximum amount of disturbance by the City's consultant.

c. The exemptions in KZC 115.42 do not apply to the square footage limitations in this subsection.



~~6. Decisional Criteria — For purposes of this section, “site” means the area of disturbance on the subject property, on abutting lots, and/or within the right of way. Decisions on reasonable use exceptions shall take into account the restrictive regulation’s economic impact on the property, the extent of the regulation’s interference with reasonable investment backed expectations, and the character of the government action. 17.7. The City shall may approve applications for reasonable use exceptions only if all of the following criteria are met:~~

~~a. The following land uses may be proposed with a reasonable use exception:~~

~~1) Residential zones — one (1) single family dwelling;~~

~~2) Commercial or Office zones:~~

~~a) An office use, except veterinary offices with outdoor facilities; and~~

~~b) A limited retail establishment, excluding restaurants and taverns, gas stations, vehicle or boat sales, service or repair, car washes, drive thru, outdoor seating area and storage.~~

~~c) In order to limit disturbance and impacts to the critical area and buffer these uses shall:~~

~~(1) Locate parking on the opposite side of the building from the critical area; and~~

~~(2) Limit hours of operation to between 8:00 a.m. and 11:00 p.m.~~

~~ab. There is no feasible alternative to the proposed activities and uses on the subject property, including reduction in size, density or intensity, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the critical area and critical area buffer.~~

~~c. Unless the applicant can demonstrate unique circumstances related to the subject property, the The maximum amount of site area that will may be disturbed by structure placement and all land alteration associated with the proposed development activity, including but not limited to land surface modification, utility installation, decks, driveways, paved areas, and landscaping, shall not exceed the following limits:~~

~~1) If the subject property contains 6,000 square feet of area or less, no more than 50 percent of the site may be disturbed.~~

~~2) If the subject property contains more than 6,000 square feet but less than 30,000 square feet, no more than 3,000 square feet may be disturbed.~~

~~3) For the subject property containing 30,000 square feet or more, the maximum allowable site disturbance shall be between 3,000 square feet and 10 percent of the lot area, to be determined by the City on a case by case basis.~~

~~4) The amount of allowable disturbance shall be that which will have the least impact on the critical area and the critical area buffer given the characteristics and context of the subject property, critical area, and critical area buffer.~~

~~5) Public improvements within the right of way required by Chapter 110 KZC (for example required curb, gutter and sidewalk improvements) are not counted in the maximum allowable area of site disturbance. The City shall allow or require modifications to the public improvement standards that minimize the impact to the critical area and~~



~~buffer and any impacts associated with required public improvements shall be mitigated by the applicant.~~

~~6) The portion of a driveway located within an improved right of way is not counted in the maximum allowable area of site disturbance. However, a driveway or any other private improvement located in an unimproved right of way shall be counted in the maximum allowable area of site disturbance. See subsection (6)(a)(2) of this section for modification to calculating on-site driveways.~~

~~The applicant shall pay for a qualified critical area professional, approved by the City, to assist with the City's determination of the appropriate limit for disturbance.~~

~~bd. The proposal is compatible in design, scale and use with other legally established development in the immediate vicinity of the subject property in the same zone and with similar critical area site constraints.~~

~~ce. The proposal utilizes to the maximum extent possible innovative construction, design, and development techniques that minimize to the greatest extent possible net loss of critical area functions and values, including pin construction, vegetated roofs, and pervious surfaces.~~

~~df. The proposed development does not pose an unacceptable threat to the public health, safety, or welfare on or off the subject property.~~

~~eg. The proposal meets the mitigation, maintenance, and monitoring requirements of this chapter.~~

~~fh. The proposed development is on a lot meeting the criteria of KZC 115.80, Legal Building Site.~~

~~gi. The inability to derive reasonable use is not the result of the applicant's actions or that of previous property owners, such as by altering lot lines pursuant to Chapter 22 KMC that results in an undevelopable condition.~~

~~hj. The granting of the exception will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances.~~

7. Process for Extraordinary Circumstances – If, due to extraordinary circumstances, the Allowed Use and Maximum Disturbance Limits specified in Subsection 5 would preclude all reasonable use of a site, an owner of real property may apply to exceed those limits. The application shall be considered under Process IIA of Chapter 150 KZC. In addition to the criteria in subsection 6 and Chapter 150 KZC, the Hearing Examiner shall take into account the restrictive regulation's economic impact on the property, the extent of the regulation's interference with reasonable investment-backed expectations, and the character of the government action. An applicant may apply to exceed the Allowed Use and Maximum Disturbance Limits specified in subsection 5 even if the applicant acquired an interest in the property after enactment of the restrictive regulations, but the extent of the regulation's interference with reasonable investment-backed expectations shall be considered in light of the regulations that existed at the time the applicant acquired an interest in the property.

86. Modifications and Conditions – The City shall include any conditions and restrictions in the written decision that the City determines are necessary to eliminate or minimize any undesirable effects of approving the proposal. To provide reasonable use of the subject property and reduce the impact on the critical area and critical area buffer, the Planning Director pursuant to a Process I under Chapter 145 KZC or Hearing Examiner pursuant to a Process IIA under Chapter 150 KZC is authorized to approve the following modifications:

a. Residential

- 1) Where the applicant demonstrates that the residential development cannot meet the City's code requirements without encroaching into the critical area or critical area buffer:

- a) The required front yard may be reduced by up to 50 percent; provided, that a minimum of 18.5-foot-long parking pad between the structure and the lot line is provided; and
  - b) The required side and rear yards may be reduced to five (5) feet in width.
- 2) The portion of a driveway exceeding 30 feet in length may be exempt from the calculation of the permitted disturbance area; provided, that the driveway length is the minimum necessary to provide access to the building.
  - 3) The structure setback from a critical area buffer pursuant to KZC 90.140 may be reduced to five (5) feet in width; provided, that those improvements allowed in this area are limited to:
    - a) Chimneys, bay windows, greenhouse windows, eaves, cornices, awnings and canopies, and decks above the ground floor extending no more than 18 inches into the structure setback;
    - b) Benches, walkways, paths and pedestrian bridges extending no more than four (4) feet into the structure setback;
    - c) Garden sculpture, light fixtures, trellises and similar decorative structures extending no more than four (4) feet in width into structure setback; and
    - d) Nonnative and native landscaping.
  - 4) The garage width requirements of KZC 115.43 for detached dwelling units in low-density zones may be waived.
  - 5) The maximum height of structures may be increased up to five (5) feet if needed to reduce the slope of a driveway to a structure based on existing grade. The applicant must demonstrate that the additional height is needed to reduce the steepness of the slope and no other option is available.

b. Commercial – Where the applicant demonstrates that the commercial development cannot meet the City's code requirements without encroaching into the critical area or critical area buffer:

- 1) The required front yard may be reduced by up to 50 percent.
- 2) The structure setback from a critical area buffer may be reduced by five (5) feet in width; provided, that those improvements allowed in this area are limited to:
  - a) Chimneys, bay windows, eaves, cornices, awnings and canopies;
  - b) Benches, walkways, paths and pedestrian bridges extending no more than four (4) feet into the structure setback;
  - c) Light fixtures, trellises and similar decorative structures extending no more than four (4) feet into the structure setback; and
  - d) Nonnative and native landscaping.
- 3) The maximum height of structures may be increased up to five (5) feet if needed to reduce the slope of a driveway to a structure based on existing grade. The applicant must demonstrate that the additional height is needed to reduce the steepness of the slope and no other option is available.

- 4) The portion of a driveway exceeding 30 feet in length may be exempt from the calculation of the permitted site disturbance area; provided, that the driveway length is the minimum necessary to provide access to the building.

97. Lapse of Approval

- a. The reasonable use exception approval expires and is void if the applicant fails to file a complete building permit application within five (5) years of the final decision granting or approving the exception. However, in the event judicial review is initiated per KZC 145.110, the running of the five (5) years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. "Final decision" means the final decision of the Planning Director; and
- b. The applicant must substantially complete construction for the development activity, use of land, or other actions approved under this chapter and complete the applicable conditions listed on the notice of decision within seven (7) years after the final approval on the matter, or the decision becomes void, excluding any applicable tolling period as described in subsection (9)(a) of this section.

108. Complete Compliance Required

- a. General – Except as specified in subsection (8)(b) of this section, the applicant must comply with all aspects, including conditions and restrictions, of an approval granted under this chapter in order to construct the improvements authorized by the approval.
- b. Exception: Subsequent Modification – The Planning Official may approve a subsequent modification to a specific use and site plan that has been approved through the reasonable use exception, provided the change meets the standards of this chapter. Otherwise, the applicant is required to apply for and obtain approval through a Process I pursuant to Chapter 145 KZC for a new reasonable use exception.

(Ord. 4551 § 3, 2017)