

ORDINANCE O-4725

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING REGULATIONS RELATED TO VIOLATIONS OF THE CITY'S TREE PROTECTION CODE.

1 WHEREAS, the City of Kirkland's Comprehensive Plan Policy
2 NE-3.1 recognizes that trees are an important element of the
3 physical environment; and that protecting, enhancing, and
4 maintaining healthy trees and vegetation are key community
5 values; and
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7 WHEREAS, the City has previously adopted legislation via
8 Ordinance 4010 and amendments thereto, codified as KZC
9 Chapter 95, recognizing that maintaining healthy trees can
10 minimize the adverse impacts of runoff, soil erosion, land
11 instability, sedimentation and pollution of waterways, thus
12 reducing the public and private costs for storm water
13 control/treatment and utility maintenance; can improve air quality
14 by absorbing air pollutants, mitigating the urban heat island
15 effect, assimilate carbon dioxide and generate oxygen, and
16 decrease the impacts of climate change; can reduce the effects of
17 excessive noise pollution; provide cost-effective protection from
18 severe weather conditions with cooling effects in the summer
19 months and insulating effects in winter; can provide visual relief,
20 screening buffers, recreational benefits, habitat, cover, food
21 supply and corridors for a diversity of fish and wildlife; and can
22 provide economic benefit by enhancing local property values and
23 contributing to the region's natural beauty, aesthetic character,
24 and livability of the community; and
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26 WHEREAS, based upon the City's experience during the
27 past several years with these code enforcement regulations to
28 protect trees, including the effectiveness of the regulations to
29 prevent damage to trees and related environmental damage, and
30 to reimburse the City for reasonable costs incurred in having to
31 respond to environmental damage caused by unlawful tree
32 removal/damage, staff recommends certain revisions to the City's
33 Code Enforcement Regulations in Chapter 1.12; and
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35 WHEREAS, these code amendments are considered
36 necessary and routine pursuant to Governor Inslee's Proclamation
37 20-28 regarding COVID-19: Open Public Meetings Act and Public
38 Records Act, issued on March 24, 2020, because they are needed
39 to prevent long-term damage to the environment, especially the
40 City's urban forest, by strengthening code enforcement of tree
41 regulations.
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43 NOW, THEREFORE, the City Council of the City of Kirkland
44 do ordain as follows:
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46 Section 1. Kirkland Municipal Code Section 1.12.100 is
47 amended to read as follows.

48 **1.12.100 Special provisions relating to enforcement of**
49 **tree regulations in Chapter 95 KZC.**

51 (a) General Requirements. This section applies to all trees in
52 the city, including private property trees, public property trees and
53 street trees. Enforcement shall be conducted in accordance with
54 procedures set forth in this chapter. Special enforcement
55 provisions related to tree ~~conservation~~-retention and restoration
56 are set forth in this section.

57 (b) Authority. It shall be the duty of the applicable
58 department director to administer the provisions of this section.

59 (c) Civil Penalty Fines for Tree Removal.

60 (1) ~~Each unlawfully removed or damaged tree shall~~
61 ~~constitute a separate violation.~~ It is unlawful to remove or
62 damage trees in violation of the tree regulations in Chapter 95
63 KZC. Tree Removal shall include the removal of a tree, through
64 either direct or indirect actions, including but not limited to: (1)
65 clearing, damaging, girdling, or poisoning, in each case, resulting
66 in an unhealthy or dead tree; (2) Topping that results in removal
67 of more than 25% of the live Crown; or (3) damage to roots or
68 trunk that is likely to destroy the tree's structural integrity.

69 (2) In addition to the definitions established in Title 1.12.020
70 KMC, Any person who aids or abets in the violation shall be
71 considered to have committed a violation for purposes of fines.

72 (3) Types of violations. Violations of this code include, but
73 are not limited to, the following:

74 (A) Removal or damage to tree(s), prior to final tree retention
75 plan approval or issuance of a city tree removal permit;

76 (B) Removal or damage to tree(s) that are shown, or would be
77 shown, to be retained on an approved tree retention plan or any
78 other violation of an approved tree retention plan;

79 (C) Removal or damage to tree(s) without applying for or
80 obtaining a required city tree removal permit; or

81 (D) Removal or damage to trees in violation of the terms and
82 conditions of an issued City permit, which will require compliance
83 with American National Standards Institute (ANSI) A300 Pruning
84 Standards.

85 (34) Civil Penalty Fines shall be assessed in accordance with
86 Table 1.12.100, Fines are due according to the corrective action
87 described in the notice of tree fines and restoration due. based on
88 the Diameter at Breast Height (DBH) of the unlawfully removed
89 or damaged tree trunk. If the DBH of an unlawfully removed or
90 damaged tree cannot be established, the diameter of the
91 remaining stump top shall be used in lieu of DBH. In cases where
92 the stump has been removed, the City will approximate the size
93 of removed tree(s) based on available evidence, and if there is
94 inadequate evidence the City shall assess a minimum \$10,000 civil
95 penalty fine per unlawfully removed tree. Fines may be assessed
96 against the responsible party in addition to the cost(s) of

97 restoration. The applicable department director may elect not to
 98 seek fines if he or she they determine that the circumstances do
 99 not warrant imposition of fines in addition to the cost(s) of
 100 restoration.

Table 1.12.100

Types of Violations	Allowable Fines per Violation
1. Removal of tree(s) approved to be removed, but prior to final tree plan approval or issuance of a city tree removal permit	\$100.00 per tree
2. Removal or damage of tree(s) that are or would be shown to be retained on an approved tree plan or any other violation of approved tree protection plan	\$1,000 per tree
3. Removal of tree(s) without applying for or obtaining a required city permit	\$1,000 per tree

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Table 1.12.100 Civil Penalty Fines

<u>Unlawfully Removed or Damaged Tree DBH or Stump Diameter</u>	<u>Fines per Tree</u>	<u>Fines per Tree when protected through easement, tracts or similar document¹</u>
Trees less than 6 inches	none	\$1,000
Larger than 6 and up to 10 inches	\$1,000	\$1,500
Larger than 10 and up to 14 inches	\$2,000	\$3,000
Larger than 14 and up to 18 inches	\$4,000	\$6,000
Larger than 18 and up to 22 inches	\$6,000	\$9,000
Larger than 22 and up to 26 inches	\$8,000	\$12,000
Larger than 26 and up to 30 inches	\$16,000	\$24,000
Larger than 30 inches	\$20,000	\$30,000
Tree stump has been eliminated	\$10,000 ²	\$15,000 ²

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Footnote:

- 103 1. Tree(s) protected through easements, tracts or similar mechanism
 104 (such as grove easements, Native Growth Protection Easements,
 105 Native Growth Retention Area, or Protected Natural Areas).
 106 2. Minimum fine amount; fine will be based on an assessment of actual
 107 size of tree when evidence allows.
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 110 (5) The fine per-tree penalty for repeat violations shall be
 111 determined by multiplying the fine per tree amount in Table
 112 1.12.100 by the number of violations. For example, the fine per-
 113 tree amount for second-time violations is multiplied by two, and
 114 the fine per-tree amount for third-time violations is multiplied by
 115 three, and so on.

116 (6) Treble Damages. Where violation(s) result in the unlawful
 117 removal of or damage to public trees, in addition to the Civil
 118 Penalty Fines in Table 1.12.100, the City may assess treble
 119 damages per RCW 64.12.030.

120 (d) Tree and Site Restoration.

121 (1) Restoration Plan. Violators of Chapter 95 KZC or of a
 122 permit issued thereunder shall be responsible for restoring
 123 unlawfully damaged areas, in conformance with a restoration plan
 124 approved by the applicable department director. The restoration
 125 plan shall provide for repair of any environmental and property
 126 damage and restoration of the site. The goal of the restoration
 127 plan shall be a site condition that, to the greatest extent practical,
 128 equals the site condition that would have existed in the absence
 129 of the violation. In cases where the violator intentionally or
 130 knowingly violated this chapter or has committed previous
 131 violations of this chapter, restoration costs may be based on the
 132 city appraised tree value of the subject trees in which the violation
 133 occurred, utilizing the industry standard trunk formula method in
 134 the current edition of the "Guide for Plant Appraisal." If diameter
 135 of removed tree is unknown, determination of the diameter size
 136 shall be made by the applicable department director by comparing
 137 size of stump and species to similar trees in similar growing
 138 conditions. The amount of costs above the approved restoration
 139 plan will be paid into the city forestry account.

140 (A) The restoration plan shall depict repairs of any
 141 environmental and property damage and restoration of the site.

142 (B) Tree violations that occur in critical areas and their buffers,
 143 on properties within shoreline jurisdiction and within the Holmes
 144 Point Overlay zone are also subject to any restoration plan
 145 requirements in KZC Chapters 90, 85, 83 and 70 KZC, respectively.

146 (C) Restoration plans on private property shall be approved by
 147 the Planning Official. If the violation occurred to public trees, or
 148 street trees, the applicable department director or their designee
 149 may require a violator to pay fees in lieu of restoration per KMC
 150 1.12.100(d)3.

151 (2) Restoration Plan Standards. The restoration plan shall be
 152 in accordance to the following standards:

153 (A) The number of trees required to be planted is shall be
 154 equal to the number of tree credits of illegally removed trees
 155 according to Table 1.12.101-Kirkland Zoning Code Table 95.33.1.

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Table 1.12.101: Tree Credits for Illegally Removed Trees
(Credits per minimum diameter – DBH)

<u>DBH</u>	<u>Tree Credits</u>	<u>DBH</u>	<u>Tree Credits</u>	<u>DBH</u>	<u>Tree Credits</u>
<u>3 – 5"</u>	<u>0.5</u>	<u>24"</u>	<u>8</u>	<u>38"</u>	<u>15</u>
<u>6 – 10"</u>	<u>1</u>	<u>26"</u>	<u>9</u>	<u>40"</u>	<u>16</u>
<u>12"</u>	<u>2</u>	<u>28"</u>	<u>10</u>	<u>42"</u>	<u>17</u>
<u>14"</u>	<u>3</u>	<u>30"</u>	<u>11</u>	<u>44"</u>	<u>18</u>
<u>16"</u>	<u>4</u>	<u>32"</u>	<u>12</u>	<u>46"</u>	<u>19</u>
<u>18"</u>	<u>5</u>	<u>34"</u>	<u>13</u>	<u>48"</u>	<u>20</u>
<u>20"</u>	<u>6</u>	<u>36"</u>	<u>14</u>	<u>50"</u>	<u>21</u>
<u>22"</u>	<u>7</u>				

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(B) ~~The minimum size for a tree planted for restoration is twelve-foot tall shall be a six-foot tall conifer and/or three-two-inch caliper deciduous or broadleaf evergreen tree. The city may approve smaller restoration tree sizes at a higher restoration ratio, provided the site has capacity for the additional trees and the results of restoration at a higher restoration ratio are as good or better than at the normal ratio depending on the size, quality and species of the removed tree. The smallest allowable alternatives to the normal restoration requirements shall be two eight-foot conifers for one twelve-foot conifer or two two-inch caliper deciduous for one three-inch caliper deciduous tree.~~

(C) ~~The restoration plan shall include a maintenance plan and an agreement or security to ensure survival and maintenance of restoration trees for a minimum five-year period.~~

~~(3)(C) In the event the violators cannot restore the unlawfully removed or damaged trees, the violators shall make payment pay a fee in lieu of restoration to the City Forestry Account. Unless otherwise determined to base the restoration costs on appraised value, the amount paid will be the city's unit cost for a restoration tree multiplied by the number of outstanding tree credits. The city's unit cost is based on the current market cost of purchase, installation and three-year maintenance for a minimum-sized tree for restoration.~~

(A) Fees in lieu of restoration shall be based on the value of the subject trees, utilizing the most recent version of the Pacific Northwest Chapter International Society of Arboriculture (ISA) "Species Ratings for Landscape Tree Appraisal" unit cost for conifer and/or deciduous tree replacement, multiplied by the number of illegally removed tree credits per Chapter 95.33.1 KZC.

(B) If the diameter at breast height of a removed or damaged tree trunk is unknown, determinations of tree value shall be made per KMC 1.12.100(c)4.

~~(D) The restoration plan shall include a maintenance plan and an agreement or security to ensure survival and maintenance~~

196 of restoration trees for a three year period unless the violation
197 was on a site with an approved tree plan, in which case the
198 maintenance period is five years.

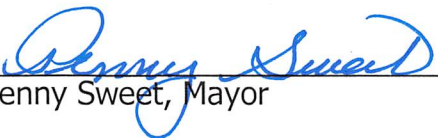
199 (e) Hearing on Violation, Failure to Restore or Failure to Pay
200 Fines. The city may issue shall enforce this code via issuance of a
201 notice of civil violation to the violator(s) according to the
202 procedures set forth in Chapter 1.12 KMC, person(s) who violates
203 Chapter 95 KZC or a permit issued thereunder and fails to restore
204 or pay fines according to the procedures set forth in this chapter.
205 The hearing on the notice of civil violation shall be held in
206 accordance with KMC 1.12.050 and shall determine whether the
207 person(s) violated applicable tree regulations or permit conditions
208 and impose any appropriate fine(s) for such violation(s), as well
209 as whether the person(s) failed to restore or pay fines according
210 to the procedures set forth in this chapter. Violator(s) may
211 administratively appeal the notice of civil violation, in which case
212 a hearing on the notice of civil violation shall be held in accordance
213 with Title 1.12.050 KMC and the hearing examiner shall determine
214 whether violation(s) occurred and, if so, the hearing examiner
215 may impose any appropriate fine(s) for such violation(s), as well
216 as require restoration or fee(s) in lieu of restoration.

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218 Section 2. If any provision of this ordinance or its
219 application to any person or circumstance is held invalid, the
220 remainder of the ordinance or the application of the provision to
221 other persons or circumstances is not affected.


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223 Section 3. This ordinance shall be in force and effect five
224 days from and after its passage by the Kirkland City Council and
225 publication pursuant to Section 1.08.017, Kirkland Municipal Code
226 in the summary form attached to the original of this ordinance and
227 by this reference approved by the City Council.

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229 Passed by majority vote of the Kirkland City Council in open
230 meeting this 05 day of May, 2020.

231 Signed in authentication thereof this 05 day of May, 2020.
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Penny Sweet, Mayor

Attest:


Kathi Anderson, City Clerk

Approved as to Form:


Kevin Raymond, City Attorney

Publication Date: 05/11/2020

PUBLICATION SUMMARY
OF ORDINANCE NO. 4725

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING REGULATIONS RELATED TO VIOLATIONS OF THE CITY'S TREE PROTECTION CODE.


SECTION 1. Amends the special provisions of the Kirkland Municipal Code, KMC 1.12.100, relating to enforcement of tree regulations as contained in Chapter 95 Kirkland Zoning Code.

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 five days after publication of summary.

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 05 day of May, 2020.

I certify that the foregoing is a summary of Ordinance 4725 approved by the Kirkland City Council for summary publication.



Kathi Anderson, City Clerk