

AN ORDINANCE OF THE CITY OF KIRKLAND ADOPTING REGULATIONS
RELATING TO STREET TREES AND TREES ON CITY PROPERTY.

The City Council of the City of Kirkland do ordain as follows:

Section 1. A new Chapter 19.36 of the Kirkland Municipal Code, entitled "Street Trees and Trees on City Property" is hereby adopted to read as follows:

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.

19.36.030 Removal or alteration of street trees 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 remove, 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. Permission 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. Permission 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. An application to remove a street tree shall be granted only in cases where the tree constitutes a "hazard tree" or a "nuisance tree" as defined in 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 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 Ordinance, 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 each violation is as follows:

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| (1) First violation: | \$200.00 |
| (2) Second violation: | \$400.00 |
| (3) Third violation: | \$600.00 |

(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.

19.36.060 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.

19.36.070 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.

19.36.080 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 17 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.

19.36.090 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 \$5,000.00, 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.

19.36.110 Remedies not exclusive

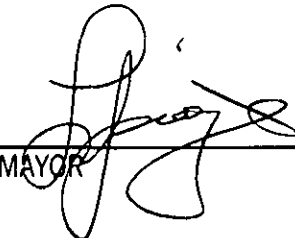
The remedies prescribed in this chapter are in addition to all other remedies provided for or authorized by law, including, but not limited to, RCW 64.12.030 which provides for treble damages for unlawful removal of trees.

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

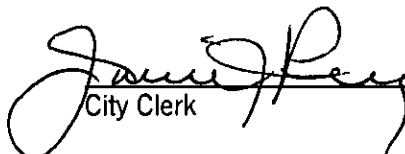
Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this 19th day of November, 2002.

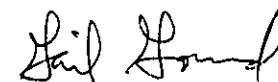
Signed in authentication thereof this 19th day of November, 2002.


MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney