

ORDINANCE NO. 4010

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING, AND LAND USE, REPEALING CHAPTER 95 OF THE KIRKLAND ZONING CODE, ADOPTING A NEW CHAPTER 95 OF THE KIRKLAND ZONING CODE, AMENDING CHAPTERS 1, 5, 85, 90, 105, 115, AND 162 OF THE KIRKLAND ZONING CODE, AND AMENDING ORDINANCE 3719 AS AMENDED, THE KIRKLAND ZONING CODE (FILE NO. IV-03-101).

WHEREAS, the City Council has received from the Kirkland Planning Commission a recommendation to amend certain sections of the text of the Kirkland Zoning Code, Ordinance 3719 as amended, all as set forth in that certain report and recommendation of the Planning Commission dated September 8, 2005 and bearing Kirkland Department of Planning and Community Development File No. IV-03-101; and

WHEREAS, prior to making said recommendation, the Planning Commission, following notice thereof as required by RCW 35A.63.070, on August 11, 2005, held a public hearing on the amendment proposals and considered the comments received at said hearing; and

WHEREAS, pursuant to the State Environmental Policies Act there has accompanied the legislative proposal and recommendation through the entire consideration process, an addendum issued by the responsible official pursuant to WAC 197-11-600 and WAC 197-11-625; and

WHEREAS, in regular public meeting the City Council considered the environmental documents received from the responsible official, together with the report and recommendation of the Planning Commission.

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

Section 1. Chapter 95 of the Kirkland Zoning Code is hereby repealed.

Section 2. A new Chapter 95 of the Kirkland Zoning Code is hereby adopted to read as follows:

As set forth in Attachment A which by this reference is incorporated herein.

Section 3. Zoning text amended: The following specified sections of the text of the Kirkland Zoning Code (Ordinance No. 3719, as amended), are hereby amended to read as follows:

As set forth in Attachment B which by this reference is incorporated herein.

Section 4. 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.

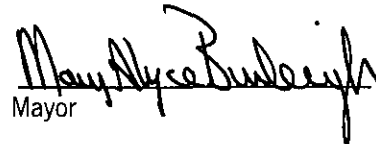
Section 5. To the extent the subject matter of this ordinance, pursuant to Ordinance 2001, is subject to the disapproval jurisdiction of the Houghton Community Council, this ordinance shall become effective January 1, 2006 within the Houghton Community Municipal Corporation only upon approval of the Houghton Community Council or the failure of said Community Council to disapprove this ordinance within 60 days of the date of the passage of this ordinance.

Section 6. Except as provided in Section 5, this ordinance shall be in full force and effect on January 1, 2006. Publication of this ordinance shall be made, pursuant to Section 1.08.017 Kirkland Municipal Code, in the summary form attached to the original of this ordinance and by this reference approved by the City Council, as required by law.


Section 7. A complete copy of this ordinance, including Findings, Conclusions and Recommendations adopted by reference, 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 1st day of November, 2005.


SIGNED IN AUTHENTICATION thereof this 1st day of November, 2005.


Mayor

Attest:


City Clerk

Approved as to Form:


City Attorney

Attachment A**CHAPTER 95. TREE MANAGEMENT AND REQUIRED LANDSCAPING**

- 95.05 Purpose and Intent**
- 95.10 Definitions**
- 95.15 Applicability**
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95.05 Purpose and Intent

95.05.1 Trees and other vegetation are important elements of the physical environment. They which are integral to Kirkland's community character and protect public health, safety and general welfare. Protecting, enhancing, and maintaining healthy trees and vegetation are key community values. A goal is to achieve an overall tree canopy coverage of 40% for the community. The many benefits of healthy trees and vegetation contribute to Kirkland's quality of life by:

- A. Minimizing the adverse impacts of land disturbing activities and impervious surfaces such as runoff, soil erosion, land instability, sedimentation and pollution of waterways, thus, reducing the public and private costs for storm water control/treatment and utility maintenance;
- B. Improving the air quality absorbing air pollutants, assimilating carbon dioxide and generating oxygen;
- C. Reducing the effects of excessive noise pollution;
- D. Providing cost-effective protection from severe weather conditions with cooling effects in the summer months and insulating effects in winter;
- E. Providing visual relief and screening buffers;
- F. Providing recreational benefits;
- G. Providing habitat, cover, food supply and corridors for a diversity of fish and wildlife; and
- H. Providing economic benefit by enhancing local property values and contributing to the region's natural beauty, aesthetic character, and livability of the community.

95.05.2 Tree and vegetation removal in urban areas has resulted in the loss to the public of these beneficial functions. The purpose of this Chapter is to establish a process and standards to provide for the protection, preservation, replacement, proper maintenance, and use of significant trees, associated vegetation, and woodlands located in the City of Kirkland.

The intent of this Chapter is to:

- A. Maintain and ~~where possible,~~ enhance canopy coverage provided by trees for their functions as identified in Section 95.05.1 in this Code;
- B. Preserve and enhance the City of Kirkland's environmental, economic, and community character with mature landscapes;

- C. Promote site planning, building, and development practices that ~~prevent indiscriminate work to avoid~~ removal or destruction of trees and vegetation, that avoid unnecessary disturbance to the City's natural vegetation, and that provide landscaping ~~where appropriate~~ to buffer the effects of built and paved areas;
- D. Mitigate the consequences of required tree removal in land development through on and off-site tree replacement with the goals of halting net loss and enhancing Kirkland's tree canopy to achieve an overall healthy tree canopy cover of 40% city-wide over time;
- E. Encourage tree retention efforts by providing flexibility with respect to certain other development requirements;
- F. Implement the goals and objectives of the City's Comprehensive Plan; ~~and~~
- G. Implement the goals and objectives of the State Environmental Policy Act (SEPA); ~~and~~
- H. Manage trees and other vegetation in a manner consistent with the City's Natural Resource Management Plan.

95.10 Definitions.

The following definitions shall apply throughout this Chapter unless the context clearly indicates otherwise. Definitions ~~shall that~~ apply throughout this Code are also located in Chapter 5 of this Code.

Caliper - The American Association of Nurseryman standard for trunk measurement of nursery stock. Caliper of the trunk shall be the trunk diameter measured 6" above the ground for up to and including 4" caliper size and 12" above the ground for larger sizes.

Critical Root Zone - The area surrounding a tree at a distance from the trunk, which is equal to one foot for every inch of tree diameter at breast height or otherwise determined by a qualified professional.

Crown - The area of a tree containing leaf or needle-bearing branches.

Diameter at Breast Height (DBH) - The diameter or thickness of a tree trunk measured at 4.5 feet from the ground.

Dripline - The distance from the tree trunk, that is equal to the furthest extent of the tree's crown.

Impact - A condition or activity that affects a part of a tree including the trunk, branches, and critical root zone.

Grove - A group of three or more significant trees with overlapping or touching crowns.

Landmark Tree - A tree or group of trees designated as such ~~by the City and agreed upon by the tree owner,~~ because of its exceptional value to the residents of the City.

Limit of disturbance - The boundary between the area of minimum protection around a tree and the allowable site disturbance as determined by a qualified professional.

Qualified Professional - An individual with relevant education and training in arboriculture or urban forestry. The individual must be an arborist certified by the International Society of Arboriculture or a registered consulting arborist from the American Society of Consulting Arborists and for Forest Management Plans, and may be a certified forester by the Society of American Foresters. A qualified professional must possess the ability to perform tree risk assessments and prescribe appropriate measures necessary for the preservation of trees during land development. For Forest Management Plans, the qualified professional must have the ability to assess wooded sites and prescribe measures for forest health and safety.

Significant tree - A tree that is at least 6" in diameter at breast height (DBH).

Significantly wooded site - A subject property that has a number of significant trees with crowns that cover at least 40% of the property; ~~usually comprised of native species.~~

Site disturbance - Any development, construction, or related operation that could alter the subject property, including but not limited to, tree or tree stump removal, road, driveway or building construction, installation of utilities, or grading.

Site perimeter - The area of the subject property that is ten (10) feet from the property line.

Specimen tree - A viable tree that is considered in very good to excellent health and free of major defects, as determined by the City's Urban Forester.

Target - Person or property that can be damaged by failure of a tree.

Tree removal - The removal of a tree, through either direct or indirect actions, including but not limited to: (1) clearing, damaging or poisoning resulting in an unhealthy or dead tree; (2) removal of at least half of the live crown; or (3) damage to roots or trunk that is likely to destroy the tree's structural integrity.

Viable tree - A significant tree that a qualified professional has determined to be in good health, with a low risk of failure due to ~~structure and minimal structural~~ defects, is relatively wind firm if isolated or remains as part of a grove, and is a species that is suitable for its location.

Wildlife snag - The remaining trunk of a dying, diseased, or dangerous tree that is reduced in height and stripped of all live branches.

Windfirm - A condition of a tree in which it can withstand moderate storm winds.

95.15 Applicability

Permit required. No person, directly or indirectly, shall remove any significant tree on any property within the city, except City right of way, without first obtaining a tree removal permit as provided in this Chapter, unless the activity is exempted in Section 95.20 of this Code. Trees in City right-of-way are regulated pursuant to KMC 19.36.

95.20 Exemptions ~~from Permit and Plan~~

The following activities are exempt from the provisions of this chapter ~~and do not require a permit~~:

95.20.1 Developed Property

~~A.~~ Any owner of developed property may remove up to two significant trees from their property within a ~~year~~ twelve-month period without a permit, provided that there is no current application for development activity for the site, and provided further that the tree(s) are not:

A.i. In easements dedicated to ensure the protection of vegetation; or in critical areas, or critical area buffers;

B.ii. Required to be retained in a Special Regulation contained in Chapters 15 through 60 KZC;

C.iii. Designated on an approved tree plan to be retained pursuant to KZC 95.35 and KZC 95.50; or

D.iv. The last two significant trees on their property. Trees that fit the criteria in KZC 95.35.4.B and KZC 95.35.4.C for nuisance or hazard trees do not count toward the removal allowance.

B. The Department of Planning and Community Development shall establish and maintain a tree removal request form to allow property owners to request Department review of potentially exempt tree removal for compliance with applicable City regulations.

C. For every significant tree that is removed, the City encourages the planting of a tree that is appropriate to the site.

95.20.2 Emergency Tree Removal. Any tree on private property that poses an imminent threat to life or property may be removed without first obtaining a permit. The party removing the tree will contact the City within seven (7) days of removal to provide evidence of threat for approval of exemption. If the Planning Official determines that the emergency tree removal was not warranted, he or she may require that the party obtain a permit and/or require that replacement trees and vegetation be replanted as mitigation.

95.20.3 Utility Management. Trees may be removed by the City or utility provider in situations involving immediate danger to life or property, or interruption of services provided by a utility.

95.20.4 Commercial Nurseries or Tree Farms. A nursery or tree farm owner may remove trees that are being grown to be sold as Christmas or landscape trees.

95.25 Alternative Compliance

All activities regulated by this Chapter shall be performed in compliance with the applicable standards contained in this Chapter, unless the applicant demonstrates that alternate measures or procedures will be equal or superior to the provisions of this Chapter in accomplishing the purpose and intent of this Chapter as described in KZC 95.05. Requests to use alternative measures and procedures shall be reviewed by the Planning Official, who may approve, approve with conditions, or deny the request. Examples include but are not limited to retention of specimen or landmark trees or low impact development techniques, including such programs as Green Building Design or Leadership in Energy and Environmental Design that demonstrate a significant reduction to stormwater runoff from the site.

95.30 City Forestry Account

1. Funding sources. All civil penalties received under this Chapter and all money received pursuant to Section 95.35 of this Chapter shall be used for the purposes set forth in this Section. In addition, the following sources may be used for the purposes set forth in this Section:
 - A. Agreed upon restoration payments imposed under KZC 95.55 or settlements in lieu of penalties.
 - B. Sale of trees or wood from city property where the proceeds from such sale have not been dedicated to another purpose;
 - C. Donations and grants for tree purposes;
 - D. Sale of seedlings by the city; and
 - E. Other monies allocated by the City Council.
2. Funding purposes. The City shall use money received pursuant to this Section for the following purposes:
 - A. Acquiring, maintaining, and preserving wooded areas within the city;
 - B. Planting and maintaining trees within the city;
 - C. Identification and maintenance of landmark trees;
 - D. ~~Propagation of seedling trees and~~ Establishment of a holding public tree nursery;
 - E. Urban forestry education; or
 - F. Other purposes relating to trees as determined by the City Council.

95.35 Tree Retention, Protection and Density

95.35.1 User GuideIntroduction

The intent of this section is to successfully retain desirable trees on developing and re-developing sites and to maintain and enhance the tree canopy of Kirkland. To that end, the City requires a tree permit in conjunction

with all development permits resulting in site disturbance and with any proposed tree removal on developed sites not exempted by Section 95.20 of this Code.

In order to make better decisions about tree retention, particularly during all stages of development, tree removal permits will require specific information about the existing trees before removal is allowed. Different levels of detail correspond to the scale of the project or activity. Specific tree plan review standards are provided in KZC 95.35.4 and include tree retention priority and incentives and variations to development standards in order to facilitate preservation of healthy, significant trees.

The City's objective is to retain as many viable trees as possible on a developing site while still allowing the development proposal to move forward in a timely manner. This section includes provisions that allow development standards to be modified in order to retain viable significant trees.

The requirement to meet a minimum tree density applies to new single-family development and major redevelopment, and new residential subdivisions, short subdivisions and Planned Unit Developments. If such a site falls below the minimum density with existing trees, supplemental planting is required. A tree density for existing trees to be retained is calculated to see if new trees are required in order to meet the minimum density for the site. Supplemental tree location priority is set as well as minimum size of supplemental trees to meet the density.

The importance of effective protection of retained trees during construction is emphasized with specific protection standards in the last part of this section. These standards must be adhered to and included on demolition, grading and building plans as necessary.

95.35.2 Tree Plan Required.

A. Requirement established. An applicant for a tree removal permit must submit a tree plan that complies with this Section. A qualified professional may be required to prepare ~~some certain~~ components of a tree plan at the applicant's expense. ~~A proposed project or activity may require a combination of Tree Plan components.~~ If proposed development activities call for more than one Tree Plan level, the Tree Plan level with the more stringent requirements shall apply, provided that the Planning Official may require a combination of Tree Plan components based on the nature of the proposed development activities. If proposed activity is not clearly identified in this Chapter, the Planning Official shall determine the appropriate Tree Plan.

B. Tree Plan and Retention Requirements. The following sets forth the different tree plans required for development activities or removal requests requiring a tree removal permit. Applicants for development are encouraged to confer with City staff as early in the design process as possible so that the applicable tree planting and retention concepts can be incorporated into the design of the subject property. Each plan sets forth the required components and retention standards for each Tree Plan. The Planning Official may waive a component for a Tree Plan, if he or she determines that the information is not necessary.

1. Tree Plan I. Tree Plan I is required for a development permit or land surface modification ~~when the proposed development activity or land surface modification would cause resulting in site disturbance for one or two attached, detached, or stacked dwelling units, impacting a significant tree that is located either in the front or rear minimum required yards as set forth in the Kirkland zoning code, or within ten (10) feet of any side property line.~~

a.) Tree Plan I – Major and Minor

- (1) Tree Plan I–Major shall be required for new development, redevelopment, or development in which the total square footage of the proposed improvements is more than 50% of the total square footage of the existing improvements on the subject property.
- (2) Tree Plan I–Minor shall be required for all proposed development activities and site disturbance for which Tree Plan I–Major does not apply.

b.) Tree Plan requirements. The Tree Plan shall include the following:

- (1) Accurate location of significant trees and their driplines measured relative to visible site features (surveyed locations may be required);
- (2) Size (DBH) and type or species of these trees; and
- (3) General health of these trees.
- (4) Approximate trunk location and measure dripline of significant trees that are on adjacent property with driplines extending over the subject property line.
- (5) For Tree Plan I-Minor, the above tree information shall be required only for trees potentially impacted by proposed development activity, and surveyed tree locations shall not be required.
- (6) For Tree Plan I - Major, assessment by a qualified professional shall be required if any significant trees are in maximum required setbacks yards or within ten (10) feet of any side property line, are proposed to be removed due to site disturbance within their drip line.

c.) Additional applicant requirements.

- (1) If existing trees impacted by site disturbance are being retained, tree protection shall be shown on the grading or demolition plan and may require assistance of a qualified professional.
- (2) The applicant shall provide a final plan showing retained trees and any required trees in order to meet tree density or minimum number of trees as outlined in KZC 95.35.2.B.1.d and KZC 95.35.2.B.1.e.
- (3) The applicant shall enter into all required tree preservation and maintenance agreements pursuant to KZC 95.50.
- (4) For lots from a short subdivision, subdivision or planned unit development with an approved Tree Plan III, the tree information shall be transferred over and the applicant must comply with the applicable Tree Plan III requirements.

d.) Site Design and Retention Requirements

- (1) For Tree Plan I - Major, the applicant shall ~~pursue applicable variations to development, as outlined in 95.35.4.A.2, for the retention of~~ retain and protect Type 1 trees, as defined in 95.35.4.A.1, ~~where feasible in all required yards to the maximum extent possible. To retain~~ Type 1 trees in required yards, the applicant shall pursue, where feasible, applicable variations in the development standards of this Code as outlined in KZC 95.35.4.A.2. The applicant shall be encouraged to retained ~~Type 1 viable~~ trees in other areas on site.
- (2) For Tree Plan I - Minor, the applicant is encouraged to retain viable trees and pursue applicable variations to development ~~for the retention of Type 1 trees.~~

e.) Tree Density Requirements

- (1) For Tree Plan I - Major, the minimum tree density applies and shall comply with the process set forth in KZC 95.35.5.
- (2) For Tree Plan I - Minor, a minimum of two trees must be on the lot following the requirement set forth in KZC 95.35.2.B.4.b.(iv).

2. Tree Plan II. A Tree Plan II is required for a development permit or land surface modification resulting in site disturbance and impact to a significant tree in ~~the maximum~~ required yards and areas for

required landscaping for three or more detached, attached, or stacked dwelling units; or any use other than residential.

a.) Tree Plan Requirements. The Tree Plan shall include the following:

- (1) A site map depicting accurate location of significant trees and their driplines measured relative to visible site features (a survey may be required) and approximate location of significant trees on adjacent property with driplines extending over the subject property; and
- (2) A report by a qualified professional stating the size (DBH), species, and assessment of health and determination of viable trees in the areas of required landscaping;
- (3) The above tree information ~~may shall~~ be required only for trees potentially impacted by proposed development activity as determined by the Planning Official.

b.) Additional applicant requirements.

- (1) Demolition and grading plans shall depict tree protection measures, as recommended by a qualified professional, if existing trees are to be retained and their dripline is within the area of disturbance.
- (2) Landscape plans shall show all retained trees.
- (3) The applicant shall enter into all required tree preservation and maintenance agreements pursuant to KZC 95.50.

c.) Site Design and Retention Requirements

The applicant shall pursue applicable variations to development, as outlined in KZC 95.35.4.A.2, for the retention of Type 1 trees, as defined in KZC 95.35.4.A.1, where feasible in the required yards and landscaping areas. If removal of a Type 1 tree in required landscaping areas is proposed, the applicant shall provide reasons for the proposed removal that may require assistance from a qualified professional.

d.) Tree Plan II sites shall not have a minimum tree density requirement but shall comply with the required landscaping pursuant to KZC 95.40. Preserved trees in required landscaping areas shall apply toward required landscaping requirements.

3. Tree Plan III. A Tree Plan III is required for ~~n~~New residential short plats, or subdivisions, or Planned Unit Development, and related land surface modification applications.

a.) Tree Plan Requirements. The Tree Plan shall include the following:

- (1) Surveyed location of all significant trees.
- (2) A tree inventory prepared by a qualified professional including a numbering system of existing significant trees (with corresponding tags on trees), measured driplines, size (DBH), species and tree status (removed or retained) based on criteria in 95.35.2.C for all significant trees. The inventory shall include approximate trunk location and measured dripline of significant trees that are on adjacent property with driplines extending over the subject property line.
- (3) A report from a qualified professional detailing:
 - i. An indication, for each tree, of whether it is proposed to be retained or removed, based on health, risk of failure and suitability of species;
 - ii. Limits of disturbance around viable trees;
 - iii. Special instruction for work within their critical root zone; and
 - iv. Location and type of protection measures for these trees.
- (4) A ~~preliminary~~ site plan utilizing the information from the tree survey, inventory and report, showing:
 - i. The proposed development activity;

- ii. Location and limits of disturbance of viable trees to be retained according to the tree inventory and report; and
- iii. Trees being removed for proposed development or trees being removed that are for not being viable;

b.) Additional Applicant Requirements.

- (1) A description and location of tree protection measures during construction for trees to be retained must be shown on demolition and grading plans. Protection measures must be in accordance with KZC 95.35.6.
- (2) Prior to permit approval, the applicant shall provide a plan showing tree density calculations pursuant to KZC 95.35.5, retained trees, trees to be removed, and any required supplemental trees to meet the minimum density. The plan must describe the details of site preparation, the installation of new trees and the maintenance measures necessary for the long-term survival and health of all trees on site pursuant to KZC 95.45 and KZC 95.50.
- (3) The applicant shall submit a preservation and maintenance agreement pursuant to KZC 95.50, for approval prior to final plat.

c.) Site Design and Retention Requirements

The Planning Official will determine tree types as outlined in KZC 95.35.4.A.1, and the applicant shall pursue applicable variations to development, as outlined in KZC 95.35.4.A.2 and KZC 95.35.4.A.3 for the retention of Type 1 trees throughout the life of the project.

d.) Tree Density Requirements

The minimum tree density shall apply to the site and shall comply with the process set forth in KZC 95.35.5.

4. Tree Plan IV. Tree Plan IV is for tree removal on a ~~developed parcel property~~ on which no development activity is proposed or in progress. Activity requiring a Tree Plan IV includes but is not limited to: hazard or nuisance tree removal not exempt under Section 95.20.1 of this Chapter; tree removal in areas dedicated to ensure protection of vegetation, critical areas and their buffers; removal of one or both of the last two significant trees on a developed site; and requests to remove hazard or nuisance trees on undeveloped ~~parcels property~~. The plan can be developed by the applicant but may require assistance of a qualified professional.

a.) Tree Plan Requirements. The Tree Plan shall include the following:

- (i) A site plan showing the approximate location of significant trees, their size (DBH) and their species, along with the location of structures, driveways, access ways and easements.
- (ii) For required replacement trees, a planting plan showing location, size and species of the new trees in accordance to standards set forth in KZC 95.35.5.C.

b.) Additional Applicant Requirements.

- (i) An arborist report explaining how the tree(s) fit the criteria in KZC 95.35.4.B or KZC 95.35.4.C if removal is based on nuisance or hazard and the nuisance or hazard condition is not obvious.
- (ii) For nuisance or hazard trees in critical areas or their buffers, the planting plan must propose action to mitigate the hazard or nuisance in accordance to standards set forth in KZC 95.35.4.

- (iii) Tree removal on undeveloped property shall be approved only for hazard or nuisance trees pursuant to the criteria in KZC 95.35.4.C and KZC 95.35.4.D. The tree removal exemptions in Section 95.20 of this Chapter are not applicable to undeveloped property.
- (iv) If the removal request is for one or both of the last two trees, even if nuisance or hazard, a one-for-one replacement is required as set forth in KZC 95.35.5.C.2.

5. Tree Plan V. Tree Plan V is a Forest Management Plan for developed, significantly wooded sites of at least 35,000 square feet in size in which tree removal is requested that is not exempt under Section 95.20 of this Chapter. A Forest Management Plan must be developed by a qualified professional. The Tree Plan shall include the following:

- a.) A plan depicting the location of all significant trees (a tree survey is not required) with a numbering system of the trees (with corresponding tags on trees in the field). The plan shall include size (DBH), species, and condition of each tree;
- b.) Identification of trees to be removed, including reasons for their removal and a description of low impact removal techniques pursuant to KZC 95.35.4.E;
- c.) A reforestation plan that includes location, size, species, and timing of installation.
- d.) A narrative report of prescribed, long-term maintenance activity for the site as outlined in KZC 95.35.4.E.8

C. Qualified Professional Reports. Reports prepared by a qualified professional shall contain the following, unless waived by the Planning Official:

- 1. A complete description of each tree's health and viability. If a tree is not viable for retention, the reason(s) must be soundly based on health, high risk of failure due to structure, defects, unavoidable isolation (windfirmness), or suitability of species and for which no reasonable alternative action is possible (pruning, cabling, etc.). The impact of necessary tree removal to remaining trees, including those in a grove or on adjacent properties, must also be discussed.
- 2. The location of limits of disturbance around all trees potentially impacted by site disturbances and any special instructions for work within that protection area (hand-digging, tunneling, root pruning, maximum grade change).
- 3. For development applications, a discussion of timing and installation of tree protection measures that must include fencing and be in accordance with the Tree Protection Standards as outlined in KZC 95.35.6.
- 4. The suggested location and species of supplemental trees to be used when required. The ~~qualified professional should report shall~~ include planting and maintenance specifications pursuant to KZC 95.45 and KZC 95.50.

95.35.3 Tree Plan Review Procedure and Appeals

- A. When an applicant proposes a development activity or project that requires a Tree Plan Level I, II or III, the tree plan shall be reviewed ~~by the Planning Department~~ as part of the applicable permit application or process.
- B. Applicants for a Level IV or V tree plan must submit a completed permit application on a form provided by the City. Within twenty-one (21) calendar days, the Planning Official shall review the application and either approve, approve with conditions or modifications, deny the application or request additional information. Any decision to deny the application shall be in writing along with the reasons for the denial and the appeal process.
- C. With respect to Level IV and Level V Tree Plans, an applicant may appeal an adverse determination to the Hearing Examiner. A written notice of appeal shall be filed with the Planning Department within fourteen (14) calendar days of the date the Planning Official's decision was mailed or otherwise delivered to the applicant following the postmark date of distribution of a Planning Official's decision. The office of

the Hearing Examiner shall give notice of the hearing to the applicant at least seventeen (17) calendar days prior to the hearing. The applicant shall have the burden of proving that the Planning Official made an incorrect decision. Based on the Hearing Examiner's findings and conclusions, he or she may affirm, reverse or modify the decision being appealed.

95.35.4 Tree Plan Review Standards

A. Site Design for Development. Tree retention shall be pursuant to this Chapter, provided that such tree retention will not reduce the applicant's ~~lot coverage or development potential~~ (lot coverage, floor area ratio, and density) allowed by the Kirkland Zoning Code. Tree plans shall comply with all tree retention requirements in the KZC, including but not limited to those in Chapters 85 and 90: Geologically Hazardous Areas and Drainage Basins, respectively.

1. Tree Retention Standards. ~~Tree plans shall comply with all tree retention requirements in the KZC, including but not limited to those in Chapters 85 and 90: Geologically Hazardous Areas and Drainage Basins, respectively.~~

a). Based on the tree plan information submitted by the applicant and the Planning Official's evaluation of the trees and proposed development on subject property, the Planning Official will designate each tree as:

i. Type 1, a viable tree that meets at least one of the criteria set forth in Section KZC 95.35.4.A.1.b;

ii. Type 2, a viable tree that is to be retained if feasible; or

iii. Type 3, a tree that is either (1) not viable or (2) is in an area where removal is unavoidable due to the anticipated development activity.

b). Tree retention efforts shall be directed to the following trees if they are determined to be healthy and wind-firm by a qualified professional, and provided the trees can be safely retained when pursuing alternatives to development standards in KZC 95.35.4.A.2:

i. Landmark trees;

ii. Specimen trees;

iii. Tree groves and associated vegetation that are to be set aside *as preserved groves* pursuant to KZC 95.50.3;

iv. Trees on slopes of at least 10% ~~for slope stability~~; or

v. Trees that are a part of a grove that extends into adjacent property, such as in a public park, open space, sensitive area buffer or otherwise preserved group of trees on adjacent private property. If significant trees must be removed in these situations, an adequate buffer of ~~smaller~~ trees may be required to be retained or planted on the edge of the remaining grove to help stabilize.

2. Incentives and Variations to Development Standards

In order to retain trees, the applicant should pursue Kirkland codes include many provisions in Kirkland's codes that allow development standards to be modified. Examples include but are not limited to number of parking stalls, right-of-way improvements, lot size reduction under Kirkland Municipal Code Section 22.28, lot line placement when subdividing property under Kirkland Municipal Code Title 22, Planned Unit Developments, and required landscaping, including buffers for lands use and parking/driving areas.

Additional Requirements of the Kirkland Zoning Code may be modified by the Planning Official as outlined below when such modifications would further the purpose and intent of this Chapter as set forth in KZC 95.05 and would involve Type 1 trees.

- a.) Common Recreational Open Space. Reductions or variations of the area, width, or composition of required common recreational open space, may be granted.
- b.) Parking Areas and Access. Variations in parking lot design and/or access driveway requirements may be granted when the Public Works and Planning Officials both determine the variations to be consistent with the intent of City policies and codes.
- c.) Required Yards. Initially, the applicant shall pursue ~~opportunities for varying options for placement of~~ required yards as permitted by other sections of this code, such as ~~selecting one front required yard in the RSX zone and adjusting side yards in any zone to~~ meet the fifteen-foot total as needed for each structure on the site. The Planning Official may also reduce the front or side required yards provided that:
 - (i) No ~~side~~-required side yard shall be less than five feet; and
 - (ii) The ~~front~~-required front yard ~~adjacent to street shall be no less~~ not be reduced by more than fifteen feet in residential zones, ~~provided that there~~. There shall not be an additional five feet of reduction beyond the allowance provided for covered entry porches.
- d. Stormwater. Requirements pertaining to stormwater may be varied if approved by the Public Works Official under Kirkland Municipal Code Section 15.52.060.

3. Additional Variations. In addition to the variations described above, the Planning Official is authorized to require site plan alterations to retain Type 1 trees. Such alterations include minor adjustments to the location of building footprints, adjustments to the location of driveways and access ways, reversing floor plans, or adjustment to the location of walkways, easements or utilities.

B. Nuisance tree criteria. A nuisance tree must meet the following criteria:

- 1. Tree is causing obvious, physical damage to private or public structures, including but not limited to: sidewalk, curb, road, driveway, parking lot, building foundation, roof;
- 2. Tree has been damaged by past maintenance practices, that cannot be corrected with proper arboricultural practices; or
- 3. The problems associated with the tree must be such that they cannot be corrected by any other reasonable practice. Including but not limited to the following:
 - a.) Pruning of the crown or roots of the tree and/or, small modifications to the site including but not limited to a driveway, parking lot, patio or sidewalk to alleviate the problem.
 - b.) Pruning, bracing, or cabling to reconstruct a healthy crown.

C. Hazard tree criteria. A hazard tree must meet the following criteria:

- 1. The tree must have a combination of structural defects and/or disease which makes it subject to a high probability of failure and is in proximity to moderate-high frequency of persons or property; and
- 2. The hazard condition of the tree cannot be lessened with reasonable and proper arboricultural practices nor can the target be removed.

D. Trees in Critical Areas or Critical Area Buffers. The intent of preserving vegetation in and near streams and wetlands and in geologically hazardous areas is to support the functions of healthy sensitive areas and sensitive area buffers (see KZC Chapter 90) and/or avoid disturbance of geologically hazardous areas (see KZC Chapter 85). The property owner must submit a Level IV Tree Plan to City Planning and Community Development Department to trim or remove any tree from a critical area or critical area buffer. If a tree is considered a nuisance or hazard in a critical area or its buffer, the priority action is to create a "snag" or wildlife tree with the subject tree. If creation of a snag is not feasible, then the felled tree shall be left in place unless the Planning Official permits its removal in writing. The

removal of any tree will require the planting of a native tree of a minimum of six feet in height in close proximity to where the removed tree was located. Selection of native species and timing of installation shall be coordinated with the Planning Official.

E. Forest Management Plan. For properties proposing tree removal requiring a Forest Management Plan, the following standards shall apply:

1. Trees to remain should be dominant or co-dominant in the stand, healthy and wind-firm.
2. No removal of trees from critical areas and their buffers, unless otherwise permitted by this chapter.
3. No removal of ~~designated~~ landmark or specimen trees, unless otherwise permitted by this chapter.
4. No removal of healthy trees that would cause trees on adjacent properties to become hazardous.
5. The reforestation plan ensures perpetuity of the wooded areas. The size of planted trees for reforestation shall be a minimum of three-foot tall.
6. Logging operations shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time. To control erosion, native shrubs, ground cover and stumps shall be retained where feasible. Where not feasible, appropriate erosion control measures to be approved by the City shall be implemented.
7. ~~Slash abatement practices~~ Removal of tree debris shall be ~~implemented~~ done pursuant to Kirkland Fire Department standards.
8. Recommended maintenance prescription for retained trees with a specific timeline for such management.

95.35.5 Tree Density Requirement

- A. Minimum Tree Density Requirement Established. The required minimum tree density is 30 tree credits per acre for development requiring a Tree Plan I-Major and Tree Plan III. For individual lots in a short subdivision or subdivision with an approved Tree Plan III, the tree density shall be calculated based on the entire short plat or subdivision. The tree density may consist of existing trees pursuant to the priority established in KZC 95.35.4.A.1, or supplemental trees or a combination of existing and supplemental trees pursuant to KZC 95.35.5.C. Existing trees transplanted to an area on the same site shall not count toward the required density unless approved by the Urban Forester based on transplant specifications provided by a qualified professional that will ensure a good probability for survival.
- B. Tree Density Calculation. For the purpose of calculating required minimum tree density, city right-of-way, and areas to be dedicated as City right-of-way shall be excluded from the area used for calculation of tree density.
Tree density calculation for existing individual trees.
 1. Diameter Breast Height (DBH) of the tree shall be measured in inches.
 2. The tree credit value that corresponds with DBH shall be found in Table 95.35.1.

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

Example: a 7,200 square foot lot would need 5 tree credits ($7,200/43,560 = 0.165 \times 30 = (4.9)$ or 5). The density for the lot could be met with a 16" tree and one 6" tree existing on site.

C. Supplemental Trees Planted to Meet Minimum Density Requirement. For sites and activities requiring a minimum tree density and where the existing trees to be retained do not meet the minimum tree density requirement, supplemental trees shall be planted to achieve the required minimum tree density.

1. Tree location. In designing a development and in meeting the required minimum tree density the trees shall be planted in the following order of priority:

(a.) On-site. The preferred locations for new trees are:

- (i) In preserved groves, critical areas or their buffers
- (ii) Adjacent to stormwater facilities as approved by Public Works under KMC 15.52.060.
- (iii) Entrance landscaping, traffic islands and other common areas in residential subdivisions.
- (iv) Site perimeter
- (v) On individual residential building lots.

(b) Off-site. When room is unavailable for planting the required trees on-site, then they may be planted at another approved location in the city.

(c) City Forestry Account. When the Planning Official determines on-site and off-site locations are unavailable, then the applicant shall pay an amount of money approximating the current market value of the supplemental trees into the City Forestry Account.

2. Minimum Size and Tree Density Value for Supplemental Trees. The required minimum size of the supplemental trees shall be six (6) feet tall for a conifer and two (2) inch caliper for deciduous or broad-leaf evergreen tree. Additional credits may be awarded for larger supplemental trees. The installation and maintenance shall be pursuant to KZC 95.45 and 95.50 respectively.

95.35.6 Tree Protection during Development Activity

Prior to Development Activity or initiating tree removal on the site, vegetated areas and individual trees to be preserved shall be protected from potentially damaging activities pursuant to the following standards:

A. Placing Materials near Trees. No person may conduct any activity within the protected area of any tree designated to remain, including, but not limited to, operating or parking equipment, placing solvents,

storing building material or soil deposits, or dumping concrete washout or other chemicals. During construction, no person shall attach any object to any tree designated for protection.

- B. Protective Barrier. Before development, land clearing, filling or any land alteration, the applicant shall:
- (1). Erect and maintain a readily visible temporary protective tree fencing along the limits of disturbance which completely surrounds the protected area of all retained trees or groups of trees. Fences shall be constructed of chain link and be at least 4' high, unless other type of fencing is authorized by the Planning Official.
 - (2). Install highly visible signs spaced no further than fifteen feet along the entirety of the protective tree fence. Said sign must be approved by the Planning Official and shall state at a minimum **"TREE PROTECTION AREA, ENTRANCE PROHIBITED"** and provide the City phone number for code enforcement to report violations.
 - (3). Prohibit excavation or compaction of earth or other potentially damaging activities within the barriers; provided that the Planning Official may allow such activities approved by a qualified professional and under the supervision of a qualified professional retained and paid for by the applicant.
 - (4). Maintain the protective barriers in place until the Planning Official authorizes their removal.
 - (5). Ensure that any approved landscaping done in the protected zone subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.
 - (6). In addition to the above, the Planning Official may require the following:
 - a. If equipment is authorized to operate within the critical root zone, cover the areas adjoining the critical root zone of a tree with mulch to a depth of at least 6" or with plywood or similar material in order to protect roots from damage caused by heavy equipment.
 - b. Minimize root damage by excavating a two (2) foot deep trench, at edge of critical root zone, to cleanly sever the roots of trees to be retained.
 - c. Corrective pruning performed on protected trees in order to avoid damage from machinery or building activity.
 - d. Maintenance of trees throughout construction period by watering and fertilizing.
- C. Grade.
- (1). The grade shall not be elevated or reduced within the critical root zone of trees to be preserved without the Planning Official's authorization based on recommendations from a qualified professional. The Planning Official may allow coverage of up to one half of the area of the tree's critical root zone with light soils (no clay) to the minimum depth necessary to carry out grading or landscaping plans, if it will not imperil the survival of the tree. Aeration devices may be required to ensure the tree's survival.
 - (2). If the grade adjacent to a preserved tree is raised such that it could slough or erode into the tree's critical root zone, it shall be permanently stabilized to prevent suffocation of the roots.
 - (3). The applicant shall not install an impervious surface within the critical root zone of any tree to be retained without the authorization of the Planning Official. The Planning Official may require specific construction methods and/or use of aeration devices to ensure the tree's survival and to minimize the potential for root-induced damage to the impervious surface.
 - (4). To the greatest extent practical, utility trenches shall be located outside of the critical root zone of trees to be retained. The Planning Official may require that utilities be tunneled under the roots of

trees to be retained if the Planning Official determines that trenching would significantly reduce the chances of the tree's survival.

- (5). Trees and other vegetation to be retained shall be protected from erosion and sedimentation. Clearing operations shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time. To control erosion, it is encouraged that shrubs, ground cover and stumps be maintained on the individual lots, where feasible.
- D. Directional felling. Directional felling of trees shall be used to avoid damage to trees designated for retention.
- E. Additional requirements. The Planning Official may require additional tree protection measures that are consistent with accepted urban forestry industry practices.

95.40 Required Landscaping

95.40.1 User Guide

Chapters 15 through 60 KZC containing the use zone charts assign a landscaping category to each use in each zone. This category is either "A," "B," "C," "D," or "E." If you do not know what landscaping category applies to the subject property, you should consult the appropriate use zone chart.

Requirements pertaining to each landscaping category are located throughout Chapter 95 of this Code, except that Landscaping Category E is not subject to Section 95.40 of this Code.

Landscape Categories A, B, C, D, and E may be subject to additional related requirements in the following other chapters:

- A. Various use zone charts, in Chapters 15 through 60 KZC, establish additional or special buffering requirements for some uses in some zones.
- B. Chapter 85 KZC, Geologic Hazards, addresses the retention of vegetation on steep slopes.
- C. Chapter 90 KZC, Drainage Basins, addresses vegetation within sensitive areas and sensitive area buffers.
- D. Chapter 92 KZC describes landscaping standards related to site design.
- E. Chapter 110 KZC, and Chapter 19.36 KMC address vegetation within rights-of-way, except for the I-405, SR-520, and Burlington Northern rights-of-way.
- F. Chapter 115.135 KZC, Sight Distance at Intersections, which may limit the placement of landscaping in some areas.
- G. Chapter 22 KMC, addresses trees in subdivisions

95.40.2 Use of Significant Existing Vegetation

- A. General – The applicant shall apply subsection 95.35.4 of this Code to retain existing trees and vegetation in areas subject to the landscaping standards of Section 95.40 of this Code. The Planning Official shall give substantial weight to the retained trees and vegetation when determining the applicant's compliance with Section 95.40 of this Code.

B. Supplement – The City may require the applicant to plant trees, shrubs, and groundcover according to the requirements of this section to supplement the existing vegetation in order to provide a buffer at least as effective as the required buffer.

C. Protection Techniques – The applicant shall use the protection techniques described in KZC 95.35.6 to ensure the protection of significant existing vegetation.

95.40.3 Landscape Plan Required

In addition to the tree plan required pursuant to KZC 95.35.2, application materials shall clearly depict the quantity, location, species, and size of plant materials proposed to comply with the requirements of KZC 95.40, and shall address the plant installation and maintenance requirements set forth in KZC 95.45, and KZC 95.50. Plant materials shall be identified with both their scientific and common names. Any required irrigation system must also be shown.

95.40.4 Minimum Land Use Buffer Requirements

The applicant shall comply with the provisions specified in the following chart and with all other applicable provisions of this chapter. Land use buffer requirements may apply to the subject property, depending on what permitted use exists on the adjoining property or, if no permitted use exists, depending on the zone that the adjoining property is in.

LANDSCAPING CATEGORY	ADJOINING PROPERTY	*Public park or low density residential use or if no permitted use exists on the adjoining property then a low density zone.	Medium or high density residential use or if no permitted use exists on the adjoining property then a medium density or high density zone.	Institutional or office use or if no permitted use exists on the adjoining property then an institutional or office zone.	A commercial use or an industrial use or if no permitted use exists on the adjoining property then a commercial or industrial zone.
A		Must comply with KZC 95.40.6.A (Buffering Standard 1)	Must comply with KZC 95.40.6.A (Buffering Standard 1)	Must comply with KZC 95.40.6.B (Buffering Standard 2)	
B		Must comply with KZC 95.40.6.A (Buffering Standard 1)	Must comply with KZC 95.40.5, 95.40.6.A (Buffering Standard 1)		
C		Must comply with KZC 95.40.6.A (Buffering Standard 1)	Must comply with KZC 95.40.6.B (Buffering Standard 2)		
D		Must comply with KZC 95.40.6.B (Buffering Standard 2)			

E	
Footnotes:	*If the adjoining property is zoned Central Business District, Juanita Business District, North Rose Hill Business District, or is located in Totem Center, KZC 95.40.6 does not apply.

95.40.5 Supplemental Plantings

- A. General – The applicant shall provide the supplemental landscaping specified in subsection (b) of this section in any area of the subject property that:
- 1) Is not covered with a building, vehicle circulation area or other improvement; and
 - 2) Is not a critical area, critical area buffer, or in an area to be planted with required landscaping; and
 - 23) Is not committed to and being used for some specific purpose.
- B. Standards – The applicant shall provide the following at a minimum:
- 1) Living plant material which will cover 80 percent of the area to be landscaped within two years. If the material to be used does not spread over time, the applicant shall re-plant the entire area involved immediately. Any area that will not be covered with living plant material must be covered with nonliving groundcover.
 - 2) One tree for each 1,000 square feet of area to be landscaped. At the time of planting, deciduous trees must be at least two inches in caliper and coniferous trees must be at least five feet in height.
 - 3) If a development requires approval through Process I, IIA, IIB or III as described in Chapters 145, 150, 152 and 155 KZC, respectively, the City may require additional vegetation to be planted along a building facade if:
 - a) The building facade is more than 25 feet high or more than 50 feet long; or
 - b) Additional landscaping is necessary to provide a visual break in the facade.

95.40.6 Land Use Buffering Standards

The chart in KZC 95.40.4 establishes which buffering standard applies in a particular case. The following subsections establish the specific requirement for each standard:

- A. For standard 1, the applicant shall provide a 15-foot-wide landscaped strip with a six-foot-high solid screening fence or wall; ~~except for public utilities, the fence or wall must be placed on the outside edge of this strip~~ the land use buffer or on the property line when adjacent to private property. For public utilities, the fence or wall may be placed either on the outside or inside edge of the landscaping strip. A fence or wall is not required when the land use buffer is adjacent and parallel to a public right-of-way that is improved for vehicular use. See KZC 115.40 for additional fence standards. ~~The landscaped strip~~ land use buffer must be planted as follows:

- 1) ~~Trees planted at 10 feet in height, at the rate of one tree per 20 linear feet of landscaped strip land use buffer, with deciduous trees of 2 ½ inch caliper, minimum, and/or coniferous trees eight feet in height, minimum.~~ At least seventy percent of trees shall be evergreen. Evergreen and deciduous trees shall be spaced no more than 20 feet apart on center.
 - 2) Large shrubs or a mix of shrubs planted to attain coverage of at least 60 percent of the land use buffer area within two years, planted at the following sizes and spacing, depending on type:
 - a. Low shrub – (mature size under three (3) feet tall), one (1) or two (2) gallon pot or balled and burlapped equivalent);
 - b. Medium shrub – (mature size from three (3) to six (6) feet tall), two (2) or three (3) gallon pot or balled and burlapped equivalent);
 - c. Large shrub – (mature size over six (6) feet tall), five (5) gallon pot or balled and burlapped equivalent).
 - 3) Living ground covers planted from either four (4) inch pot with twelve (12) inch spacing or one (1) gallon pot with eighteen (18) inch spacing to cover within two years 60 percent of the land use buffer not needed for viability of the shrubs or trees.
- B. For Standard 2, the applicant shall provide a five-foot-wide landscaped strip with a six-foot-high solid screening fence or wall ~~on the outside edge of this strip.~~ Except for public utilities, the fence or wall must be placed on the outside edge of the land use buffer or on the property line when adjacent to private property. For public utilities, the fence or wall may be placed either on the outside or inside edge of the landscaping strip. A fence or wall is not required when the land use buffer is adjacent and parallel to a public right-of-way that is improved for vehicular use. See KZC 115.40 for additional fence standards. The landscaped strip must be planted as follows:
- 1) ~~One row of trees planted at two inch caliper and spaced no more than 10 feet apart on center along the entire length of the buffer, with deciduous trees of two inch caliper, minimum, and/or coniferous trees at least six feet in height, minimum.~~ At least 50 percent of the required trees shall be evergreen.
 - 2) ~~Shrubs planted at the following sizes and spacing, depending on type:~~
 - a. ~~Low shrub – (mature size under three (3) feet tall), one (1) or two (2) gallon pot or balled and burlapped equivalent;~~
 - b. ~~Medium shrub – (mature size from three (3) to six (6) feet tall), two (2) or three (3) gallon pot or balled and burlapped equivalent;~~
 - c. ~~Large shrub – (mature size over six (6) feet tall), five (5) gallon pot or balled and burlapped equivalent.~~
 - 3) ~~Living ground covers planted from either four (4) inch pot with twelve (12) inch spacing or one (1) gallon pot with eighteen (18) inch spacing to cover within two years 60 percent of the land use buffer not needed for viability of the trees.~~
- C. Plant Standards. All plant materials used shall meet the most recent American Association of Nurseryman Standards for nursery stock: ANSI 260.1.

- D. Location of the Land Use Buffer – The applicant shall provide the required buffer along the entire common border between the subject property and the adjoining property.
- E. Multiple Buffering Requirement – If the subject property borders more than one adjoining property along the same property line, the applicant shall provide a gradual transition between different land use buffers. This transition must occur totally within the area which has the less stringent buffering requirement. The specific design of the transition must be approved by the City.
- F. Adjoining Property Containing Several Uses – If the adjoining property contains several permitted uses, the applicant may provide the least stringent land use buffer required for any of these uses.
- G. Subject Property Containing Several Uses – If the subject property contains more than one use, the applicant shall comply with the land use buffering requirement that pertains to the use within the most stringent landscaping category that abuts the property to be buffered.
- H. Subject Property Containing School – If the subject property is occupied by a school, land use buffers are not required along property lines adjacent to a street.
- I. Encroachment into Land Use Buffer – Typical incidental extensions of structures such as chimneys, bay windows, greenhouse windows, cornices, eaves, awnings, and canopies may be permitted in land use buffers as set forth in KZC 115.115.3.d provided that (1) Buffer planting standards are met; and (2) Required plantings will be able to attain full size and form typical to their species.
- J. Modification – The applicant may request a modification of the requirements of the buffering standards of KZC 95.40.6. The Planning Official may approve a modification if:
- 1) The owner of the adjoining property agrees to this in writing; and
 - 2) The existing topography or other characteristics of the subject property or the adjoining property, or the distance of development from the neighboring property decreases or eliminates the need for buffering; or
 - 3) The modification will be more beneficial to the adjoining property than the required buffer by causing less impairment of view or sunlight; or
 - 4) The Planning Official determines that it is reasonable to anticipate that the adjoining property will be redeveloped in the foreseeable future to a use that would require no, or a less intensive, buffer; or
 - 5) The location of pre-existing improvements on the adjoining site eliminates the need or benefit of the required landscape buffer.
- K. Outdoor Use, Activity, and Storage (KZC 115.105.2) must comply with required land use buffers for the primary use, except that the following outdoor uses and activities, when located in commercial or industrial zones, are exempt from KZC 115.105.2.c.1 and KZC 115.105.2.c.2 as stated below:
- 1) That portion of an outdoor use, activity, or storage area which abuts another outdoor use, activity, or storage area which is located on property zoned for commercial or industrial

use.

- 2) Outdoor use, activity, and storage areas which are located adjacent to a fence or structure which is a minimum of six feet above finished grade; and do not extend outward from the fence or structure more than five feet; provided, that the total horizontal dimensions of these areas shall not exceed 50 percent of the length of the façade or fence (see Plate 11).
- 3) If there is an improved path or sidewalk in front of the outdoor storage area, the outdoor use, activity or storage area may extend beyond five feet if a clearly defined walking path at least three feet in width is maintained and there is adequate pedestrian access to and from the primary use. The total horizontal dimension of these areas shall not exceed 50 percent of the length of the façade of the structure or fence (see Plate 11).
- 4) Outdoor dining areas.
- 5) That portion of an outdoor display of vehicles for sale or lease which is adjacent to a public right-of-way that is improved for vehicular use; provided, that it meets the buffering standards for driving and parking areas in KZC 95.40.7.B.1.a) and KZC 95.40.7.B.1.b) and provided further that the exemptions of KZC 95.40.7.B.2 do not apply unless it is fully enclosed within or under a building, or is on top of a building and is at least one story above finished grade.
- 6) Outdoor Christmas tree lots and fireworks stands if these uses will not exceed 30 days, and outdoor amusement rides, carnivals and circuses, and parking lot sales which are ancillary to the indoor sale of the same goods and services, if these uses will not exceed seven days.

95.40.7 Landscaping and Buffering Standards for Driving and Parking Areas

A. Landscaping

1. General – Except as specified in subsection (2) of this section, the applicant shall arrange all surface parking spaces so that there are no more than eight contiguous parking spaces in each row of spaces. An island or peninsula of the same dimensions of the adjacent parking stalls must separate adjacent groups of spaces from one another and each row of spaces from any adjacent driveway that runs perpendicular to the row. This island or peninsula must be surrounded by a six-inch high vertical curb and must be landscaped with at least one deciduous tree, two inches in caliper as measured using the standards of the American Association of Nurserymen or a coniferous tree five feet in height.
2. Exception – The requirements of subsection (1) of this section do not apply to any area that:
 - a) Is within the CBD Zone; or
 - b) Is fully enclosed within or under a building; or
 - c) Contains less than 14 parking spaces; or
 - d) Is within any zone that requires design regulation compliance.
3. For a driving or parking area on the top level of a parking garage structure that is not within the CBD zone or within any zone that requires design regulation compliance, one planter that is 24 30 inches deep and five feet square must be provided for every eight stalls on the top level of the parking garage structure. Each planter must contain a small tree or large shrub suited to the size of the container and the specific site conditions, including

desiccating winds, and be clustered with other planters near driving ramps or stairways to maximize visual effect.

B. Buffering

1. General – Except as specified in subsection (2) of this section, the applicant shall buffer all parking areas and driveways from the right-of-way and from adjacent property with a five-foot wide strip along the perimeter of the parking areas and driveways planted as follows:
 - a) One row of trees, two inches in caliper and planted 30 feet on center along the entire length of the strip.
 - b) Living groundcover planted to attain coverage of at least 60 percent of the strip area within two years.
2. Exception – The requirements of subsection (1) of this section do not apply to any parking area that:
 - a) Is within the CBD Zone; or
 - b) ~~Is within, atop, or under a building~~ fully enclosed within or under a building; or
 - c) Is on top of a building and is at least one story above finished grade; or
 - ~~e)d)~~ Serves detached dwelling units exclusively; or
 - ~~d)e)~~ Is within any zone that requires design regulation compliance.
3. Overlapping Requirements – If buffering is required under KZC 95.40.6 and by this section, the applicant shall utilize the more stringent buffering requirement.

C. Modifications of Landscaping and Buffering Standards for Driving and Parking Areas

- 1) Authority to grant and duration
 - a) If the proposed development of the subject property requires approval through Design Review or Process I, IIA, IIB, or III, described in KZC Chapters 142, 145, 150, 152, and 155, respectively, a request for a modification will be considered as part of that process under the provisions of this section. The City must find that the applicant meets the criteria listed below in KZC 95.40.7.C.2). *If granted under Design Review or Process I, IIA, IIB, or III, the modification is binding on the City for all development permits issued for that development under the Building Code within five years of the granting of the modification.*
 - b) If subsection (1)(a) of this section does not apply, the Planning Official may grant a modification in writing under the provisions of this section.
- 2) Modifications
 - a) For a modification of KZC 95.40.7.A, the landscape requirements may be modified if:
 - i. The modification will produce a landscaping design in the parking area comparable or superior to that which would result from adherence to the adopted standard; or
 - ii. The modification will result in increased retention of significant existing vegetation; or
 - iii. The purpose of the modification is to accommodate Low Impact Development techniques as approved by the Planning Official.
 - b) For a modification to KZC 95.40.7.B, the buffering requirements for parking areas and driveways may be modified if:

- i. The existing topography of or adjacent to the subject property decreases or eliminates the need for visual screening; or
- ii. The modification will be of more benefit to the adjoining property by causing less impairment of view or sunlight; or
- iii. The modification will provide a visual screen that is comparable or superior to the buffer required by KZC 95.40.7.B; or
- iv. The modification eliminates the portion of the buffer that would divide a shared parking area serving two or more adjacent uses, but provides the buffer around the perimeter of the shared parking area.

95.40.8 Nonconforming Landscaping and Buffers

- A. The landscaping requirements of KZC 95.40.5 and 95.40.7 must be brought into conformance as much as is feasible, based on available land area, in either of the following situations:
 - 1) An increase of at least 10% in gross floor area of any structure; or
 - 2) An alteration to any structure, the cost of which exceeds 50 percent of the replacement cost of the structure.
- B. Land use buffers must be brought into conformance with KZC 95.40.6 in either of the following situations:
 - 1) An increase in gross floor area of any structure (the requirement to provide conforming buffers applies only where new gross floor area impacts adjoining property); or
 - 2) A change in use on the subject property and the new use requires larger buffers than the former use.

95.45 Installation Standards for Required Plantings

All required trees and landscaping shall be installed according to sound horticultural practices in a manner designed to encourage quick establishment and healthy plant growth. All required landscaping shall be installed in the ground and not in above-ground containers, except for landscaping required on the top floor of a parking garage structure. When an applicant proposes to locate a subterranean structure under required landscaping that appears to be at grade, the applicant will: (1) Provide site-specific documentation prepared by a qualified expert to establish that the design will adequately support the long-term viability of the required landscaping; and (2) Enter into an agreement with the City, in a form acceptable to the City Attorney, indemnifying the City from any damage resulting from development activity on the subject property which is related to the physical condition of the property. The applicant shall record this agreement with the King County Department of Elections and Records.

95.45.1 Street Trees.

Street trees are not subject to the regulations of this chapter and are not counted toward any landscaping required by this chapter. Street trees are regulated by KZC Chapter 110 and KMC 19.36.

95.45.2 Compliance.

It is the applicant's responsibility to show that the proposed landscaping complies with the regulations of this chapter.

95.45.3 Timing.

All landscaping shall be installed prior to the issuance of a Certificate of Occupancy, except that the installation of any required tree or landscaping may be deferred during the summer months to the next planting season, but never for more than 6 months. Deferred installation shall be secured with a performance bond pursuant to KZC Chapter 175 prior to the issuance of a certificate of occupancy.

95.45.4 Grading.

Berms shall not exceed a slope of two horizontal feet to one vertical foot (2:1).

95.45.5 Soil Specifications.

Soils in planting areas shall have adequate porosity to allow root growth. Soils which have been compacted to a density greater than one and three-tenths (1.3) grams per cubic centimeters shall be loosened to increase aeration to a minimum depth of twenty-four (24) inches or to the depth of the largest plant root ball whichever is greater. Imported topsoils shall be tilled into existing soils to prevent a distinct soil interface from forming. After soil preparation is completed, motorized vehicles shall be kept off to prevent excessive compaction and underground pipe damage. The organic content of soils in any landscape area shall be as necessary to provide adequate nutrient and moisture-retention levels for the establishment of plantings. See KZC Section 95.45.8 for mulch requirements.

95.45.6 Plant Selection

- A. Plant selection shall be consistent with the *Kirkland Plant List*, which is produced by the City's Natural Resource Management Team and available in the Department of Planning and Community Development.
- B. Plants shall be selected and sited to produce a hardy and drought-resistant landscape area. Selection shall consider soil type and depth, the amount of maintenance required, spacing, exposure to sun and wind, the slope and contours of the site, and compatibility with existing native vegetation preserved on the site. Preservation of existing vegetation is strongly encouraged.
- C. Prohibited materials. Plants listed as prohibited in the *Kirkland Plant List* are prohibited in required landscape areas. Additionally, there are other plants that may not be used if identified in the *Kirkland Plant List* as potentially damaging to sidewalks, roads, underground utilities, drainage improvements, foundations, or when not provided with enough growing space.
- D. All plants shall conform to American Association of Nurserymen (AAN) grades and standards as published in the "American Standard for Nursery Stock" manual.
- E. Plants shall meet the minimum size standards established in other sections of the KZC.
- F. Multiple-stemmed trees may be permitted as an option to single-stemmed trees for required landscaping provided that such multiple-stemmed trees are at least ten (10) feet in height and that they are approved by the Planning Official prior to installation.

95.45.7 Fertilization.

All fertilizer applications to turf or trees and shrubs shall follow Washington State University, National Arborist Association or other accepted agronomic or horticultural standards.

95.45.8

Irrigation. The intent of this standard is to ensure that plants will survive the critical establishment period when they are most vulnerable due to lack of watering. All required plantings must provide an irrigation system, using either Option 1, 2, or 3 or a combination of those options. For each

option irrigation shall be designed to conserve water by using the best practical management techniques available. These techniques may include, but not be limited to: drip irrigation to minimize evaporation loss, moisture sensors to prevent irrigation during rainy periods, automatic controllers to insure proper duration of watering, sprinkler head selection and spacing designed to minimize overspray, and separate zones for turf and shrubs and for full sun exposure and shady areas to meet watering needs of different sections of the landscape. Exceptions, as approved by the Planning Official, to the irrigation requirement may be approved xeriscape (i.e. low water usage plantings), plantings approved for low impact development techniques, established indigenous plant material, or landscapes where natural appearance is acceptable or desirable to the City. However, those exceptions will require temporary irrigation (Option 2 and/or 3) until established.

- A. Option 1. A permanent built-in irrigation system with an automatic controller designed and certified by a licensed landscape architect as part of the landscape plan.
- B. Option 2. An irrigation system designed and certified by a licensed landscape architect as part of the landscape plan, which provides sufficient water to ensure that the plants will become established. The system does not have to be permanent if the plants chosen can survive adequately on their own, once established.
- C. Option 3. Irrigation by hand. If the applicant chooses this option, an inspection will be required one year after final inspection to ensure that the landscaping has become established.

95.45.9 Drainage. All landscapes shall have adequate drainage, either through natural percolation or through an installed drainage system. A percolation rate of one-half (1/2) inch of water per hour is acceptable.

~~**95.45.10**~~ Fences. All fences shall be placed on the inward side of any required perimeter landscaping when adjacent to a public right-of-way and on the outward side of the required landscaping or on the property line when adjacent to private property. See KZC 115.40 for additional fence standards.

95.45.11 Mulch

- A. Required plantings, except turf or areas of established ground cover, shall be covered with two inches or more of organic mulch to minimize evaporation and runoff. Mulch shall consist of materials such as yard waste, sawdust, and/or manure that are fully composted.
- B. All mulches used in planter beds shall be kept at least six (6) inches away from the trunks of shrubs and trees.

95.45.12 Protection. All required landscaped areas, particularly trees and shrubs, must be protected from potential damage by adjacent uses and development, including parking and storage areas. Protective devices such as bollards, wheel stops, trunk guards, root guards, etc., may be required in some situations.

95.45.13 Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers

Plants intended to mitigate for the loss of natural resource values are subject to the following requirements in addition to the other requirements of subsection 95.45 of this Code. Where these requirements conflict with other requirements of this chapter, these requirements take precedence. Refer to KZC Chapters 85 and 90 for additional requirements for these areas.

- A. Plant Source. Plant materials must be native and selected from the *Kirkland Plant List*. Seed source must be as local as possible, and plants must be nursery propagated unless transplanted from on-site areas approved for disturbance. These requirements must be included in the Mitigation Plan specifications.
- B. Installation. Plant materials must be supported only when necessary due to extreme winds at the planting site. Where support is necessary, stakes, guy wires, or other measures must be removed as soon as the plant can support itself, usually after the first growing season. All fertilizer applications to turf or trees and shrubs shall follow Washington State University, National Arborist Association or other accepted agronomic or horticultural standards.
- C. Fertilizer Applications. ~~Fertilizers shall be applied. Fertilizer applications shall be made in~~ such a manner as to prevent its entry into waterways and wetlands and minimize its entry into storm drains. No applications shall be made within fifty (50) feet of a waterway or wetland, or a required buffer as established by the City codes (such as Chapter 90 KZC) or Kirkland Shoreline Master Program (SMP, Chapter 24 of the KMC), whichever is greater, unless specifically authorized in an approved mitigation plan or otherwise authorized in writing by the Planning Official.

95.50 Tree and Landscape Maintenance Requirements

The following maintenance requirements apply to all trees and other vegetation required to be planted or preserved by the City:

95.50.1 Responsibility for Regular Maintenance. Required trees and vegetation, fences, walls, and other landscape elements shall be considered as elements of the project in the same manner as parking, building materials, and other site details. The applicant, landowner, or successors in interest shall be responsible for the regular maintenance of required landscaping elements. Plants that die must be replaced in kind.

95.50.2 Maintenance Duration. Maintenance shall be ensured in the following manner except as set forth in sections KZC 95.50.3 and 4:

- A. ~~Applicants for All required landscaping shall be maintained throughout the life of the development. Prior to issuance of a certificate of occupancy, multi-family and all non-residential development the proponent shall provide a final as-built landscape plan and an agreement to landscape maintenance and replacement agreement for all landscaping that is required by the City, prior to issuance of a certificate of occupancy.~~
- B. ~~Any additional existing tree or other existing vegetation designated for preservation on a Tree Plan I – Major, a Tree Plan II, or a Tree Plan III shall be maintained for a period of five (5) years following issuance of the certificate of occupancy for the individual lot or development. After five (5) years, all trees on the property are subject to KZC 95.20.A unless:~~
 - 1) The tree and associated vegetation are in a grove that is protected pursuant to KZC 95.50.3; or
 - 2) The tree or vegetation is considered to be a public benefit related to approval of a Planned Unit Development; or
 - 3) The tree or vegetation was retained to partially or fully meet requirements of 95.40, Required Landscaping.
- B. ~~Applications subject to Tree Plan I – Major and Tree Plan III requirements shall maintain all trees and vegetation designated for retention on the approved tree plan for a period of five (5)~~

~~years following issuance of the certificate of occupancy for the individual lot. After five (5) years, all trees on the property are subject to KZC 95.20.A.~~

- 95.50.3** Maintenance of Preserved Grove. Any applicant who has a grove of trees identified for preservation on an approved tree plan pursuant to KZC 95.35.4.A.1.b shall provide prior to occupancy the legal instrument acceptable to the City to ensure preservation of the grove and associated vegetation in perpetuity, except that the agreement may be extinguished if the Planning Official determines that preservation is no longer appropriate.
- 95.50.4** Maintenance of Critical Area and Critical Area Buffers. In critical areas and their buffers, native vegetation is not to be removed without City approval pursuant to KZC 95.35.4.E. However, it is the responsibility of the property owner to maintain critical areas and their buffers by removing non-native, invasive, and noxious plants in a manner that will not harm critical areas or their buffers. See also KZC 95.50.6 and KZC Chapters 85 and 90 for additional requirements for trees and other vegetation within critical areas and critical area buffers.
- 95.50.5** Non-native Invasive and Noxious Plants. It is the responsibility of the property owner to remove non-native invasive plants and noxious plants from the vicinity of any tree or other vegetation that the City has required to be planted or protected. Removal must be performed in a manner that will not harm the tree or other vegetation that the City has required to be planted or protected.
- 95.50.6** Pesticides, ~~and~~ Herbicides, and Fertilizer. The use of plant material requiring excessive pesticide or herbicide applications to be kept healthy and attractive is discouraged. Pesticide, ~~and~~ herbicide, ~~and~~ fertilizer applications shall be made in a manner that will prevent their unintended entry into waterways, wetlands, and storm drains. No application shall be made within fifty (50) feet of a waterway or wetland or a required buffer as established by City codes, whichever is greater, unless done so by a state certified applicator with approval of the Planning Official, and is specifically authorized in an approved mitigation plan or otherwise authorized in writing by the Planning Official.
- 95.50.7** Landscape Plans and Utility Plans. Landscape plans and utility plans shall be coordinated. In general, the placement of trees and large shrubs should adjust to the location of required utility routes both above and below ground. Location of plants shall be based on the plant's mature size both above and below ground. See the *Kirkland Plant List* for additional standards.
- 95.50.8** Tree Pruning. Topping or pruning to the extent defined by Tree Removal in KZC 95.10, is not allowed. If a required tree smaller than six (6) inches in diameter is topped, it must be replaced pursuant to the standards in KZC 95.55.8. If a tree six (6) inches or larger in diameter is topped, the owner must have a qualified professional develop and carry out a 5-year pruning schedule.

95.55 Enforcement and Penalties

95.55.1 Intent.

These enforcement and penalty provisions have several purposes. First, they are intended to discourage damage or removal of significant trees above and beyond what is permitted under this Chapter. Second, these enforcement and penalty provisions are intended to provide complete and effective restoration of areas in which violations of this Chapter occur. Finally, these regulations are intended to provide a clear and efficient process for addressing violations of this Chapter.

The City may utilize one or more of several remedies when responding to violations of this Chapter. In almost all cases where a violation has occurred, the City will issue a civil citation that describes the nature of the violation, the actions necessary to remedy the violation, and the amount of any civil penalty, among other things. If the acts that constitute a violation appear to be ongoing, the City may also issue a notice of cease and desist. Failure to adhere to a notice to cease and desist will result in imposition of additional civil penalties. If there is a pending development or building permit, the City may also issue a stop work order or withhold issuance of permit approval or a certificate of occupancy. Finally, additional fines may be imposed if a violator does not follow through in a timely manner with restoration work or other compliance issues.

95.55.2 General Requirements.

Enforcement shall be conducted in accordance with procedures set forth in Chapter 170 of this Code. Special enforcement provisions related to tree conservation are set forth below. To the extent there is a conflict between the provisions of this section and Chapter 170 of this Code, this section shall control.

95.55.3 Authority.

It shall be the duty of the Planning Official to administer the provisions of this Chapter. The Planning Official shall have authority to enforce and carry out the provisions of this Chapter.

95.55.4 Cease and Desist.

The Planning Official may issue a notice to cease and desist using the procedure set forth in Section 170.30 of this Code if the Planning Official finds that a violation of this Code has occurred. Continued illegal tree activity following issuance of a cease and desist from the city for the tree activity shall result in fines of \$1,000 per day of continued activity.

95.55.5 Stop Work Order.

If a violation of this Chapter or an approved tree plan occurs on property on which work is taking place pursuant to a City of Kirkland development or building permit, the Building Official may suspend some or all of the work as appropriate through issuance of a stop work order. The Building Official shall remove the stop work order when the City determines that the violation has been corrected or when the City has reached an agreement with the violator regarding rectification of the violation. Any stop work order issued under this section may be appealed using the procedures set forth in Chapter 21.06 of the Kirkland Municipal Code.

95.55.6 Civil Citation.

The City's Code Enforcement Officer shall notify a person who violates this Chapter by issuance of a Civil Citation. The civil citation shall be in writing, and issued by certified mail with return receipt requested, or by personal service. The civil citation shall contain the following:

- A. The name and address of the property owner or other person to whom the civil citation is directed;
- B. The street address or description sufficient for identification of the land upon which the violation has occurred or is occurring;
- C. A description of the violation and a reference to the provisions of this Chapter that have been violated;
- D. A statement of the restoration action required to be taken to correct the violation as determined by the Planning Official;

- E. A statement of the civil penalty incurred for each violation;
- F. A statement that the person to whom the civil citation is issued must correct the violation through restoration described in KZC 95.55.8 and may pay the civil penalty or may appeal the civil citation as provided in this Section.

95.55.7 Civil Penalty.

- A. A person who fails to comply with the requirements of this Chapter or the terms of a permit issued hereunder, who undertakes an activity regulated by this Chapter without obtaining a permit, or fails to comply with a cease and desist or stop work order issued under this Chapter shall also be subject to a civil penalty as set forth in Table 55.1 of this Chapter. Each unlawfully removed or damaged tree shall constitute a separate violation.
- B. Any person who aids or abets in the violation shall be considered to have committed a violation for purposes of the civil penalty.
- C. The amount of the penalty shall be assessed in accordance with Table 95.55.1 of this Chapter. The Planning Official may elect not to seek penalties if he or she determines that the circumstances do not warrant imposition of civil penalties in addition to restoration.

Table 95.55.1 - Penalties

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 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

95.55.8 Tree Restoration.

- A. Violators of this Chapter or of a permit issued thereunder shall be responsible for restoring unlawfully damaged areas in conformance with a plan, approved by the Planning Official, which provides for repair of any environmental and property damage, and restoration of the site; and which results in a site condition that, to the greatest extent practical, equals the site condition that would have existed in the absence of the violation(s). In cases where the violator intentionally or knowingly violated this Chapter or has committed previous violations of this Chapter, restoration costs may be based on the City appraised tree value of the subject trees in which the violation occurred, utilizing the industry standard trunk formula method in the current edition of Guide for Plant Appraisal. If diameter of removed tree is unknown, determination of the diameter size shall be made by the Planning Official by comparing size of stump and species to similar trees in similar growing conditions. The amount of costs above the approved restoration plan will be paid into the City Forestry Account.
- B. Restoration Plan Standards. The restoration plan shall be in accordance to the following standards:

1. The number of trees required to be planted is equal to the number of tree credits of illegally removed trees according to Table 95.35.1.
2. The minimum size for a tree planted for restoration is 12' tall conifer and 3" 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 is as good or better than at the normal ratio. The smallest allowable alternatives to the normal restoration requirements shall be two 8-ft conifers for one 12-ft. conifer or two 2" caliper deciduous for one 3" caliper deciduous tree.
3. In the event the violators cannot restore the unlawfully removed or damaged trees, the violators shall make payment 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.
4. The restoration plan shall include a maintenance plan and an agreement or security to ensure survival and maintenance of restoration trees for a three-year period unless the violation was on a site with an approved Tree Plan in which case, the maintenance period is five (5) years.

95.55.9 Failure to Restore or Pay Fines.

- A. Prohibition of Further Approvals. The city shall not approve any application for a subdivision or any other development permit or approval, or issue a certificate of occupancy for property on which a violation of this Chapter has occurred until the violation is cured by restoration or other means accepted by the Planning Official and by payment of any penalty imposed for the violation.
- B. Fines. A property owner or occupant who fails to restore or otherwise cure property on which a violation of this Chapter has occurred shall be assessed a fine of \$100.00 per day for each day that restoration is incomplete. Prior to assessing fines under this subsection, the City shall issue a written notice to the property owner or that restoration has not been completed. The notice shall include the following information: (1) a description of the nature of the violation; (2) a description of what actions are required to bring the property into compliance; and (3) a date by which compliance shall be required (the "compliance date"). The compliance date shall be no less than 30 days from the date the notice is served on the property owner or occupant. If the property owner or occupant does not, in the determination of the City, bring the property into compliance by the compliance date, then the City may issue an order imposing \$100.00 per day fines at anytime after the compliance date. The fines shall continue to accrue until the violation has been certified to be corrected by the Planning Department. The property owner or occupant may appeal the order imposing fines to the hearing examiner using the procedures set forth in subsection 10 of this section.

95.55.10 Appeal to Hearing Examiner.

- A. A person to whom a civil citation or order imposing fines is directed may appeal the civil citation, including the determination that a violation exists or the amount of any monetary penalty imposed, to the Hearing Examiner.
- B. A person may appeal the civil citation or order imposing fines by filing a written notice of appeal with the Department of Planning and Community Development within 14 calendar days of the date of service of the civil citation or order imposing fines.

- C. Fines that accrue on a daily basis shall not be imposed while an appeal is pending unless the Hearing Examiner determines that the appeal is frivolous or imposed solely for the purpose of delay.
- D. If both a civil citation and an order to cease and desist have been issued in the same case, and both the civil citation and the order to cease and desist have been appealed, the appeals shall be consolidated for hearing.
- E. The office of the Hearing Examiner shall give notice of the hearing to the appellants at least 17 calendar days prior to the hearing.
- F. The Hearing Examiner shall conduct a hearing on the appeal pursuant to the rules of procedure provided for in the Administrative Procedures Act (RCW 34.05) and in accordance with any rules for hearings promulgated by the Hearing Examiner. The City and the appellant may participate as parties in the hearing and each may call witnesses. The City shall have the burden of proof by a preponderance of the evidence that a violation has occurred.

95.55.11 Hearing Examiner Decision.

- A. 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 imposed by the civil citation, with or without written conditions.
- B. In the event that the Hearing Examiner determines that a violation has occurred, the Hearing Examiner shall also consider the following in making his or her decision: (1) whether the appeal is frivolous or intended to delay compliance; (2) whether the appellant exercised reasonable and timely effort to comply with applicable development regulations; and (3) any other relevant factors.
- C. The Hearing Examiner shall mail a copy of his or her decision to the appellant, by certified mail, postage prepaid, return receipt requested.
- D. The decision of the Hearing Examiner may be reviewed in King County Superior Court using the standards set forth in RCW 36.70C.130. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the Hearing Examiner (see RCW 36.70C for more information).

**AMENDMENTS FOR TREE MANAGEMENT AND REQUIRED LANDSCAPING
Located Outside of Zoning Code Chapter 95**

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Attachment B

ZONING CODE TABLE OF CONTENTS

Pp. i-iii Amend as needed for KZC amendments.

ZONING CODE CHAPTER 1

1.10.25 Trees – Are you interested in pruning or removing trees or thinking of doing anything on your property that may impact trees, e.g. grading, building, remodeling, or demolishing? If so, you should read KZC Chapter 95 before you begin to design.

ZONING CODE CHAPTER 5

5.10.085 Buffer, Land Use – Any structural, earth or vegetative form that is located along a boundary for the purpose of minimizing visual and noise impacts. Land use buffers may include, but are not limited to, berms, high shrubs, dense stands of trees, trellises and fences.

5.10.860 Significant Trees – Any evergreen tree of eight inches in diameter or greater (25 inches in circumference (around) or greater), and any deciduous tree, other than red alder and cottonwood trees, 12 inches in diameter or greater (37 inches in circumference or greater), measured one foot above the root crown. Any tree that is at least 6 inches in diameter measured at 4.5 feet from the ground (diameter at breast height).

ZONING CODE CHAPTER 85

85.05 User Guide
1. This chapter establishes special regulations that apply to development on property containing geologically hazardous areas. These regulations add to and, in some cases, supersede other regulations of the code. See Chapter 95 for additional regulations that address trees and other vegetation within and outside of geologically hazardous areas.

85.25 Performance Standards – Landslide Hazard Areas and Seismic Hazard Areas
(See also Chapter 95)

As part of any approval of development in a landslide hazard area or seismic hazard area, the City may require the following...

AMENDMENTS FOR TREE MANAGEMENT AND REQUIRED LANDSCAPING
Located Outside of Zoning Code Chapter 95

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ZONING CODE CHAPTER 90

- 90.05** User Guide
(Add to the end) See also KZC 95.35.4.D, Tree Plan Review Standards – Trees in Critical Areas and Critical Area Buffers; and KZC 95.45.13, Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers.
- 90.45.1** Wetland Buffers and Setbacks – No land surface modification shall occur and no improvement may be located in a wetland or its buffer, except as provided in this section. See also KZC 95.35.4.D, Tree Plan Review Standards – Trees in Critical Areas and Critical Area Buffers; and KZC 95.45.13, Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Required, or standard, buffers for wetlands are as follows...
- 90.65** Wetland Restoration – Planning Official approval is required prior to wetland restoration. The Planning Official may permit or require the applicant or property owner to restore and maintain a wetland and/or its buffer by removing material detrimental to the area, such as debris, sediment, or vegetation. The Planning Official may also permit or require the applicant to restore a wetland or its buffer through the addition of native plants and other habitat features. See also KZC 95.35.4.D, Tree Plan Review Standards – Trees in Critical Areas and Critical Area Buffers; and KZC 95.45.13, Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Restoration may be required whenever a condition detrimental to water quality or habitat exists. When wetland restoration is required by the City, the requirements of KZC 90.55(4), Compensatory Mitigation, shall apply.
- 90.90.1** Stream Buffers – No land surface modification shall occur and no improvement may be located in a stream or its buffer, except as provided in this section. See also KZC 95.35.4.D, Tree Plan Review Standards – Trees in Critical Areas and Critical Area Buffers; and KZC 95.45.13, Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Required, or standard, buffers for streams are as follows...
- 90.120** Stream Rehabilitation – Planning Official approval is required prior to stream rehabilitation. The Planning Official may permit or require the applicant or property owner to restore and maintain a stream and/or its buffer by removing material detrimental to the stream and its surrounding area such as debris, sediment, or vegetation. The Planning Official may also permit or require the applicant to restore a stream or its buffer through the addition of native plants and other habitat features. See also KZC 95.35.4.D, Tree Plan Review Standards – Trees in Critical Areas and Critical Area Buffers; and KZC 95.45.13, Installation Standards for Required Plantings – Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Restoration may be required at any time that a condition detrimental to water quality or habitat exists. When stream rehabilitation is required by the City, the mitigation plan and monitoring requirements of KZC 90.55(4), shall apply.

**AMENDMENTS FOR TREE MANAGEMENT AND REQUIRED LANDSCAPING
Located Outside of Zoning Code Chapter 95**

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ZONING CODE CHAPTER 105

- 105.75** Parking Area Design – Landscaping
(Replace all text under the heading for 105.75 with the following :)
See KZC Chapter 95 for parking area landscaping requirements
- 105.80** Parking Area Design – Buffering
(Replace all text under the heading for 105.80 with the following :)
See KZC Chapter 95 for parking area buffering requirements
- 105.103.3.e** ~~For a modification to KZC 105.75, the landscape requirements may be modified if...significant natural vegetation...for parking and driving areas see KZC Chapter 95.~~
- 105.103.3.g** See KZC Chapter 95 for a modification of the buffering requirements for parking and driving areas. For a modification to KZC 105.10(2)(g) ~~and 105.80~~, the screening requirements for access easements or tracts ~~and the buffering requirements for parking areas and driveways~~ may be modified if...The modification will provide a visual screen that is comparable or superior to the buffer required by KZC 105.10(2)(g) ~~and 105.80~~ respectively.

ZONING CODE CHAPTER 115

- 115.75.3.k.4)**
~~115.75.3.k.4) In any one-year period, not more than five healthy trees defined as significant natural vegetation are removed. If the subject property is larger than one acre, the limit is five trees within each acre, or one tree per each one-fifth acre over the first full acre. No tree whose removal would conflict with a Special Regulation contained in Chapters 15 through 60 KZC may be removed under this section. See also Chapter 95 KZC for regulations requiring the retention of significant natural vegetation in some cases; and~~
- 115.105.2.d.2)** See KZC 95.40 for exceptions to subsections (2)(c)(1) and (2)(c)(2) of this section.
~~Exceptions to subsections (2)(c)(1) and (2)(c)(2) of this section:~~
- ~~a) That portion of an outdoor...~~
 - ~~b) Outdoor use, activity, and storage areas...~~
 - ~~c) If there is an improved...~~
 - ~~e) That portion of an outdoor...~~

**AMENDMENTS FOR TREE MANAGEMENT AND REQUIRED LANDSCAPING
Located Outside of Zoning Code Chapter 95**

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ZONING CODE CHAPTER 162

162.35.6 Nonconforming Landscaping, Buffers and Paving

- a. ~~See KZC 95.40 for nonconforming landscaping and buffering requirements. The landscaping requirements of KZC 95.20, 105.75, and 105.80 must be brought into conformance as much as feasible, based on available land area, in either of the following situations:~~
- ~~(1) An increase in gross floor area of any structure; or~~
 - ~~(2) An alteration to any structure, the cost of which exceeds 50% of the replacement cost of the structure.~~
- b. ~~Landscape buffers must be brought into conformance in either of the following situations:~~
- ~~1) An increase in gross floor area of any structure (the requirement to provide conforming buffers applies only to the new gross floor area); or~~
 - ~~2) A change in use on the subject property and the new use requires larger buffers than the former use.~~
- b.c. Parking lot surfaces must be brought into conformance...replacement cost of the structure.

PUBLICATION SUMMARY
OF ORDINANCE NO. 4010

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING, AND LAND USE, REPEALING CHAPTER 95 OF THE KIRKLAND ZONING CODE, ADOPTING A NEW CHAPTER 95 OF THE KIRKLAND ZONING CODE, AMENDING CHAPTERS 1, 5, 85, 90, 105, 115, AND 162 OF THE KIRKLAND ZONING CODE, AND AMENDING ORDINANCE 3719 AS AMENDED, THE KIRKLAND ZONING CODE (FILE NO. IV-03-101).

SECTION 1. Repeals Chapter 95 of the Kirkland Zoning Code.

SECTION 2. Adopts a new Chapter 95 of the Kirkland Zoning Code.

SECTION 3. Amends other sections of the Kirkland Zoning Code.

SECTION 4. Provides a severability clause for the ordinance.

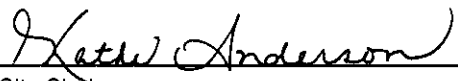
SECTION 5. Provides that the effective date of the ordinance is affected by the disapproval jurisdiction of the Houghton Community Council.

SECTION 6. 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 January 1, 2006.

SECTION 7. 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 1st day of November, 2005.

I certify that the foregoing is a summary of Ordinance 4010 approved by the Kirkland City Council for summary publication.



City Clerk