



## Kirkland tree code summary (October 14, 2019)

Following is a summary of Kirkland’s current citywide tree ordinance ([Kirkland Zoning Code Chapter 95](#)) and the [amendments now being considered](#) by City officials. Also summarized below are recommendations that FHNA and the Master Builders Association of King and Snohomish Counties have submitted or may propose to Kirkland’s planning officials.

Note: This summary doesn’t describe the current Holmes Point Overlay ordinance ([Kirkland Zoning Code Chapter 70](#)) or [proposed revisions to that ordinance](#) (which the City Council consider after amending the citywide tree ordinance). Certain tree retention standards in the HPO are and likely will remain more stringent than those in the citywide tree ordinance.

### I. Tree removal and replanting during development

#### Current ordinance

*Tree removal and retention* – Any permit application to develop property must include a plan showing which trees will be retained, removed, and planted. Healthy “significant” trees (trees with trunks at least 6” diameter at breast height) should be retained “to the maximum extent possible” if they are clustered in groves or located in setbacks (front, back and side yards); healthy significant trees located elsewhere on a parcel must be retained when “feasible”. City staff can require minor adjustments to building locations as well as adjustments to the location of drives, paths, and utilities in order to save high retention value trees.

*New tree planting* – If, following development, the property will have fewer than 30 tree credits per acre (8 credits on a ¼ acre lot), the developer must plant new trees to meet the 30 credits/acre requirement. Tree credits are based on the trunk diameters of trees. For example, a 30” inch tree is worth 11 credits, a 16” tree is worth 4 credits, etc. New 4’ tall native trees and 2” diameter deciduous trees earn one credit each.

#### *Problems* –

*Retention:* Today, many of the trees that aren’t in setbacks are cut down, particularly on smaller lots, primarily due to building size, access requirements, and utility installations. Large trees are most vulnerable because their root structures may extend over a significant portion of a lot. And tree plans don’t necessarily determine what will happen to trees during development; under what’s called “phased” review, a builder can defer final retention decisions on some trees until site grading begins or individual homesites are designed. Trees may be removed – in accordance with regulations – during construction for many reasons, but neighbors often think they are being cut down illegally.

Developers are unhappy because they don’t know, when they purchase a property, which trees they’ll be required by the City to retain. This can lead to multiple review cycles by City staff, adding risk and delay to the construction process, as well as increasing the price of the home.

*Planting:* Some trees that developers plant don't add much to the tree canopy – e.g. arborvitae. Also, 30 credits/acre doesn't meet the City's overall 40% tree canopy cover objective.

#### Ordinance amendments proposed by City staff

##### *Tree Retention –*

*Landmark/Tier 1 trees:* FHNA and the builders agree that exceptional trees – Landmark or Tier 1 trees (30" trunk diameters or more) – must be retained unless doing so would prevent a builder from constructing a home of a minimum width or depth (e.g. 40' width at front) or running utilities to a home using best building practices. City staff support this proposal. The City estimates that about 11% of trees on private land in Kirkland qualify as Landmark or Tier 1 trees.

*Tier 2 trees:* City staff have proposed that healthy significant trees smaller than Landmark trees – Tier 2 trees – and located in setbacks should be retained subject to slightly relaxed guidelines for home construction (e.g. a building's width can't be reduced below 50' in order to save a Tier 2 tree). City staff also want to retain discretion to flip building footprints and revise patio and walkway designs to save Tier 2 trees in setbacks.

*Integrated Design Plans (IDPs):* City staff have recommended that homebuilders submit IDPs, which will require that final tree retention plans be made available for public comment when development permit applications are filed. Revisions to these tree plans during the construction process would be subject to public comment and an appeal process.

*New Tree planting –* City staff continue to recommend planting as needed to achieve 30 credits/acre at the end of the development project.

#### FHNA comments on proposed amendments

*Landmark/Tier 1 Trees –* We strongly support more protection for Landmark trees, even though we most of these trees will not be saved given both current zoning (smaller lots) and the physics of constructing homes on wooded lots (homes occupy space where trees previously stood). We think the definition of a Landmark tree should be expanded to cover more trees. We estimate an expansion of the Tier 1 definition to cover trees with trunks of 27" diameter or greater would extend the highest degree of tree protection to 16% of Kirkland's trees. The builders prefer a Landmark tree definition that covers only trees with trunk diameters of 30" or more.

*Tier 2 trees –* FHNA and the builders initially proposed that Tier 2 tree retention standards apply to any Tier 2 trees, wherever located on a lot, but only up to 50 tree credits/acre. As noted above, City staff prefer retaining all Tier 2 trees if they are in setbacks, subject to several limitations. The builders think that the staff proposal is open to interpretation, leads to unpredictability, and compromises home design. FHNA has supported the staff's recommendation but recommends that be refined to include objective and reasonable standards that will make the retention process more efficient and predictable.

*Integrated Development Plans –* FHNA advocated successfully in 2017 for the adoption of IDPs in the Holmes Point Overlay area. We support requiring IDPs throughout the City. The builders have reservations about IDPs, noting that tree plans are prepared before site work begins, and some trees marked for retention might need to be removed due to development issues that couldn't be foreseen. We're encouraging builders and staff to discuss solutions that enable some IDP revisions during construction without undermining the integrity of an approved tree plan. However, any proposal to

remove a Tier 1 tree that was originally marked for retention should be subject to public comment and appeal.

*Planting* – City staff propose to retain the 30 tree credit/acre standard, saying that a higher tree density standard could result in over-plantings on small lots. FHNA and the builders support lifting the standard to 50 credits/acre because some newly planted trees will die or be removed by owners before they mature. FHNA recommends that a meaningful portion of new plantings consist of native species, notably conifers, to preserve local character. City staff, FHNA and builders agree that certain species – such as arbor vitae – shouldn’t qualify for planting credits.

## **II. Tree removal by homeowners (not as part of property development)**

### Current ordinance

A homeowner may remove two healthy significant trees per year without a permit, up to the last two healthy significant trees on the property. Additionally, trees can be removed if shown to be hazardous. Trees in the public right-of-way may be removed only with a permit. Taking off more than 25% of a tree’s crown is treated as a removal.

Owners of wooded lots larger than 35,000 square feet can also remove trees based on a forest management plan (designed to permit removal of overgrowth but preserve wooded areas perpetually).

*Problems* – Several homeowners want a higher tree removal allowance for larger properties, on the theory that they have more trees than smaller parcels. Some owners have also sought permission to remove more than the prescribed annual quota as part of a landscaping plan that contemplates replanting.

### Proposed ordinance amendments

The proposed tree code revision would allow Tier 2 trees to be removed without a permit as follows:

Lot size	Annual Quota of Tier 2 tree removals with notice
Up to 10,000 square feet	2
10,000 – 20,000 square feet	4
20,000 square feet or greater	6

The proposed amendments would not allow the removal of Landmark trees except with a permit. Code language concerning the removal of hazardous trees and right-of-way trees would not change.

### FHNA comments

We don’t oppose adjusting the tree removal quota by lot size, but the minimum threshold should also be adjusted, so that larger lots larger should retain at least four to six trees (absent a permit to remove more). We support protecting Landmark trees from non-permit removals; if such trees weren’t protected, homeowners on the verge of selling their properties would be encouraged to cut down those trees, frustrating efforts to require developers to retain them.

### III. Other issues

The following issues don't fall neatly into proposed tree ordinance amendments but are items that FHNA would like the City address as part of an effective urban tree canopy program:

#### Right-of-way and public trees

The City should make a greater effort to retain right-of-way trees. It appears that City standards for curbs and sidewalks are often applied without regard to tree retention. FHNA and the builders agree the City should also invest more robustly in replanting on City-owned property like parks, promoting community education and outreach programs, and enhancing staff resources collect data and expand tree programs.

#### Enforcement

*Inspections* -- Better enforcement of the Kirkland tree code will improve tree retention. The City recently allocated funds for an additional inspector, but FHNA believes more properly trained staff are required to ensure that rules are observed. In particular, FHNA recommends that developers be required to schedule an inspection before property clearing and grading begins.

*Protective fencing* – The tree code currently requires fencing around protected trees so that the soil over their root systems won't be compacted by heavy equipment. Builders assert, however, that fences must be moved during construction for a variety of legitimate reasons. FHNA suggests fence movement be permitted only to the extent justified in the developer's tree plan, which should specify mitigation measures (e.g., load dispersion) to minimize tree damage.

#### Penalties

Penalties for tree ordinance violations aren't set out in the ordinance itself; instead they're listed in the City's Municipal Code. The staff favor strengthening penalties for tree infractions. FHNA supports doing so as soon as possible.

#### Transparency

The IDP process can be a useful tool for neighbors to comment on a tree retention if they can easily access the plan and associated materials. The City should put these documents on its website so that residents don't have to go to the City Hall to view them.

#### Completion bonds

Several development projects in Kirkland have stalled after trees have been cleared, leaving bare sites susceptible to slides. FHNA believes that subdivisions or projects on steep slopes should not be permitted unless a replanting bond is posted – so that if work is suspended for a significant period, the City can install erosion barriers and landscaping.

#### Accessory dwelling units (ADUs)

The City is revising its rules to encourage the construction of ADUs as part of a broader campaign to promote affordable housing in Kirkland. FHNA supports that goal, but we are concerned that more trees will be lost if ADUs are exempted from current lot coverage requirements in the current zoning code.