

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

Planning Commission Meeting Date: May 17, 2018

Agenda Item: 6a

PLANNING COMMISSION AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Tree Retention in MUR-70' Development Code Amendment - Reconsidered
DEPARTMENT: Planning & Community Development
PRESENTED BY: Paul Cohen, Planning Manager
Steven Szafran, AICP, Senior Planner

Public Hearing
 Discussion

Study Session
 Update

Recommendation
 Other

Introduction

On February 26, 2018, the City Council considered the Planning Commission recommendations on the 2017 Batch of Development Code amendments that the Planning Commission developed in Fall 2017. The Planning Commission recommended denial of Amendment #25(B), a citizen-initiated request for the removal of the MUR -70' as an exempt zone from the tree code requirements. In adopting Ordinance No. 789, the City Council instead approved the citizen -initiated amendment and removed MUR-70' from the list of zones exempt from the tree code requirements. The Council also directed Staff to return to the Planning Commission to study, propose options, and draft additional amendments that may provide a compromise to support tree retention in MUR -70' zone and the City's vision for redevelopment in the MUR-70' zone. The City Council's concern was focused on this zone because of its large area and the amount of existing trees. The City Council emphasized its desire to have an amendment that is workable and proportional to the scale and extent of development. In addition, councilmembers suggested:

- Tree retention requirements would greatly curtail the redevelopment potential of the station subarea plans;
- Greater retention requirements may be needed on site perimeters or as a protected reserve on adjacent parcels purchased if the site is too small to accommodate development and tree retention; and
- Tree removal, per current code, on properties should be restricted until those properties have redevelopment applications.

The MUR -70' amendment adopted by Council includes the existing exceptions (SMC 20.50.350.B) that potentially allow a reduction in the number of trees to be retained. The Development Code also has incentives (SMC 20.50.350.C) that allow relief from site development standards if greater tree retention is proposed. The criteria of SMC 20.50.350.B is difficult to meet and no developers have proposed to use the incentives in 20.50.350.C.

Approved By:

Project Manager _____

Planning Director 

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

In general, regulations that clash with or cancel each other can mean that the City has compiled too many regulations without properly considering the feasibility for development proposals to implement them all. This is especially apparent when all the MUR zones must achieve a minimum density and developments are being proposed on small, residential lots that typically have numerous trees scattered throughout the site. Adding a tree retention requirement can make it impossible to develop these sites. The one-size-fits-all tree standards are good examples of this conflict.

The purpose of this study session is to:

- Review the proposed Development Code amendments;
- Respond to the Commission's questions regarding the proposed Development Code amendments;
- Gather public comment; and
- Develop the Planning Commission's recommendation for the Public Hearing.

Amendments to Shoreline Municipal Code (SMC) Title 20 (Development Code) are processed as legislative decisions. Legislative decisions are non-project decisions made by the City Council under its authority to establish policies and regulations. The Planning Commission is the reviewing authority for legislative decisions and is responsible for holding an open record Public Hearing on the proposed Development Code amendment and making a recommendation to the City Council.

Relevant 2018 Draft Batch Amendments

Prior to Council's action to remove the MUR-70' exemption from tree code regulations, staff had been developing a draft list of amendments for the 2018 Development Code Batch under SMC 20.50.310.B and SMC 20.50.350.B. In the draft list are two tree code amendments that are related to this issue. Since these are related to the Council's directions to Staff regarding tree retention in MUR-70', Staff would like to include them in the discussion.

One draft amendment is to extend, proportionally, the number of exempt trees for removal in SMC 20.50.310.B beyond the current six (6) significant trees for parcels of 21,781 square feet or greater to an additional exempt tree for each additional 7,200 square feet of parcel with no upper parcel size limit. This amendment was privately-initiated by the Highlands community because of very large parcel sizes and the amount of significant trees within that community.

Neighborhood Business (NB), Community Business (CB), Mixed Business (MB), Town Center (TC) 1 and 2 currently do not require tree retention or replacement beyond that which is required as part of the landscaping standards for new development. If the Planning Commission chooses to recommend to the City Council that the MUR-70' zone continue to be subject to the tree retention and replacements regulations and also recommends requiring retention and replacement for trees in Neighborhood Business (NB), Community Business (CB), Mixed Business (MB), Town Center (TC) 1 and 2 zones; then as a compromise staff suggests the following amendment. This amendment would reassign the minimum tree retention percentage based on the

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

amount of allowed hardscape. The rationale is that the more hardscape that is allowed the less area remains to retain trees. Most of the current City's development proposals for townhome development cannot meet their minimum density while also meeting the current 20% tree retention. This 20% tree retention standard originated in King County before 1995 and was based on single family development. This amendment proposes to assign a range between 20% tree retention for parcels that allow 45 to 50% lot coverage to 5% tree retention for parcels that allow 90% lot coverage. Currently, maximums for hardscape in all zones are set forth in SMC 20.50.020:

- 45% for R-4
- 50% for R-6
- 65% for R-8
- 75% for R-12
- 85% for R-18, R-24, NB, CB, and MUR-35'
- 90% for R-48, TC-4, MUR-45', and MUR-70'
- 95% for MB and TC-1, 2, and 3

Policies Regarding Trees and MUR Zones

The Shoreline Comprehensive Plan has a large range of goals and policies that could be addressed in discussion of tree retention in MUR zones. Many of the goals and policies support inclusion of the natural environment, existing vegetation, and transitions to single family neighborhoods. Other goals and policies emphasize economic development, affordable housing, and dense transit-oriented communities. The issue of tree retention in MUR zones is trying to find a feasible solution to include trees within the Station subareas while fulfilling the intent of the subareas - denser, transit-oriented, development.

Station Subarea Policies (*Italics Staff*)

LU23: Collaborate with regional transit providers to design transit stations and facilities that further the City's vision by employing superior design techniques, such as use of sustainable materials; inclusion of public amenities, open space, and art; and substantial landscaping and *retention of significant trees*.

LU32: Create and apply innovative methods and tools to address land use transitions in order to manage impacts on residents and businesses in a way that respects individual property rights. Develop mechanisms to provide timely information so residents can plan for and respond to changes.

LU34: Create a strategy in partnership with the adjoining neighborhoods for *phasing redevelopment of current land uses to those suited for Transit-Oriented Communities (TOCs)*, taking into account when the city's development needs and market demands are ready for change.

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

LU35: Allow and encourage uses in station areas that will foster the creation of communities that are socially, *environmentally, and economically sustainable.*

LU36: Regulate design of station areas *to serve the greatest number of people traveling to and from Shoreline. Combine appropriate residential densities with a mix of commercial and office uses, and multi-modal transportation facilities.*

LU37: Pursue market studies to determine the feasibility of developing any of Shoreline's station areas as destinations (example: regional job, shopping, or entertainment centers).

LU40: Regulate station area design to provide transition from high density multi-family residential and commercial development to single-family residential development.

Community Design Residential

CD37. *Minimize the removal of existing vegetation, especially mature trees, when improving streets or developing property.*

Natural Environment Policies

NE3. *Balance the conditional right of private property owners to develop and alter their land with protection of native vegetation and critical areas.*

NE6. *Provide incentives for site development that minimizes environmental impacts.*

NE19. *Minimize removal of healthy trees, and encourage planting of native species in appropriate locations.*

Housing

Goal H I: Provide sufficient development capacity to accommodate the 20 year growth forecast and promote other goals, such as creating demand for transit and local businesses through increased residential density along arterials; and improved infrastructure, like sidewalks and stormwater treatment, through redevelopment.

Goal H III: Preserve and develop housing throughout the city that addresses the needs of all economic segments of the community, including underserved populations, such as households making less than 30% of Area Median Income.

Goal H V: Integrate new development with consideration to design and scale that complements existing neighborhoods, and provides

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

effective transitions between different uses and intensities.

Promote Affordable Housing Opportunities

H7: Create meaningful incentives to facilitate development of affordable housing in both residential and commercial zones, *including consideration of exemptions from certain development standards in instances where strict application would make incentives infeasible.*

H11: Encourage affordable housing availability in all neighborhoods throughout the city, *particularly in proximity to transit, employment, and/or educational opportunities.*

H18: Consider mandating an affordability component in Light Rail Station Areas or other Transit-Oriented Communities.

Economic Development

Goal ED II: Promote retail and office activity to diversify sources of revenue, and expand the employment base.

Goal ED VII: Encourage multi-story buildings for efficient land use.

Quality Of Life

ED1: Improve economic vitality by:

- Promoting existing businesses;
- Recruiting new businesses;
- Assisting businesses to create strategies and action plans through the Small Business Accelerator Program;
- Encouraging increased housing density around commercial districts, especially those served by high capacity rapid transit, to expand customer base; and
- Developing design guidelines to enhance commercial areas with pedestrian amenities, and “protect and connect” adjacent residential areas.

ED9: Promote land use and urban design that allows for smart growth and dense nodes of transit-supportive commercial activity to promote a self-sustaining local economy.

ED17: Provide fast, predictable, and customer service-oriented permitting processes for commercial improvements, expansions, and developments.

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

Impact of Adopted Amendment on Lynnwood Link Project

Over the past year Sound Transit (ST) has been working with the City on their preliminary plans prior to submitting a Special Use Permit (SUP) to modify code sections and to condition the Lynnwood Link project to be compatible with the existing proposed development. The ST stations and guideway are almost primarily in MUR-70' zones. ST has proposed that 296 significant trees be removed within the MUR-70' zone. If the MUR-70' significant trees are no longer exempt from replacement, as adopted recently by Council in Ordinance No. 789, ST will be required to provide for 693 replacement trees for the light rail project. The City anticipates ST to request a replacement tree reduction because not enough area will remain to replant more than the 296 trees.

Other Jurisdiction Tree Retention

As part of the Council discussion, developments in other urban areas that look attractive and include mature trees were cited. The following information highlights the tree requirements used in three local cities that are often highlighted as having attractive and high quality development:

- Bellevue has no tree retention requirements in the Downtown Land Use District and requires tree retention in street frontage areas and on property perimeters between two sub-districts of the Bel-Red Land Use District. Both Downtown and Bel-Red districts will be served by ST stations.
- Seattle has no retention requirements in their Low-Rise, Mid-Rise, and Commercial districts. However, the Director can designate Exceptional Trees to be preserved. Exceptional Trees are a minimum 24 inches in diameter and must have historic, ecological, or specimen attributes.
- Kirkland only has tree retention requirements in single family areas, residential developments up to three units, and subdivisions.

Options for Consideration

1. Recommend the Planning Commission's original 2017 recommendation to retain MUR-70' as an exempt zone from the tree code.
2. Recommend the City Council's adopted 2018 amendment to not exempt MUR-70' from tree retention and replacement regulations in the tree code.

The intent of this amendment was to not allow the MUR-70' zone, with many existing trees, to be exempt so that the subarea is not too urban and devoid of significant trees.

3. Recommend Councilmember Roberts amendments, in addition to the Council inclusion of MUR-70' in the tree code.

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

The intent of this amendment is to slow the rate of tree removal by requiring permits to remove trees in all zones; to allow zones with higher development intensity to be exempt from tree retention requirements, however, require replacement trees for those trees that are permitted to be removed.

Option 3 Proposed Amendment Language

20.50.310 Exemptions from permit.

A. Complete Exemptions. The following activities are exempt from the provisions of this subchapter and do not require a permit:

1. Emergency situation on private property involving danger to life or property or substantial fire hazards.

a. Statement of Purpose. Retention of significant trees and vegetation is necessary in order to utilize natural systems to control surface water runoff, reduce erosion and associated water quality impacts, reduce the risk of floods and landslides, maintain fish and wildlife habitat and preserve the City's natural, wooded character. Nevertheless, when certain trees become unstable or damaged, they may constitute a hazard requiring cutting in whole or part. Therefore, it is the purpose of this section to provide a reasonable and effective mechanism to minimize the risk to human health and property while preventing needless loss of healthy, significant trees and vegetation, especially in critical areas and their buffers.

b. For purposes of this section, "Director" means the Director of the Department and his or her designee.

c. In addition to other exemptions of SMC 20.50.290 through 20.50.370, a request for the cutting of any tree that is an active and imminent hazard such as tree limbs or trunks that are demonstrably cracked, leaning toward overhead utility lines or structures, or are uprooted by flooding, heavy winds or storm events. After the tree removal, the City will need photographic proof or other documentation and the appropriate application approval, if any. The City retains the right to dispute the emergency and require that the party obtain a clearing permit and/or require that replacement trees be replanted as mitigation.

2. Removal of trees and/or ground cover by the City and/or utility provider in situations involving immediate danger to life or property, substantial fire hazards, or interruption of services provided by a utility. The City retains the right to dispute the emergency and require that the party obtain a clearing permit and/or require that replacement trees be replanted as mitigation.

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

3. *Installation and regular maintenance of public utilities, under direction of the Director, except substation construction and installation or construction of utilities in parks or environmentally critical areas.*

4. *Cemetery graves involving less than 50 cubic yards of excavation, and related fill per each cemetery plot.*

~~5. Removal of trees from property zoned NB, CB, MB and TC-1, 2 and 3, unless within a critical area or critical area buffer.~~

6. *Removal and restoration of vegetation within critical areas or their buffers consistent with the provisions of SMC 20.80.030(E) or removal of trees consistent with SMC 20.80.030(G) unless a permit is specifically noted under SMC 20.80.030(E).*

20.50.350 Development standards for clearing activities.

A. *No trees or ground cover shall be removed from critical area or buffer unless the proposed activity is consistent with the critical area standards.*

B. *Minimum Retention Requirements. All proposed development activities that are not exempt from the provisions of this subchapter, or in (except on) property zoned NB, CB, MB, TC-1, 2, 3, and 4 and MUR-70' and MUR-45', shall meet the following:*

1. *At least 20 percent of the significant trees on a given site shall be retained, excluding critical areas, and critical area buffers, or*

2. *At least 30 percent of the significant trees on a given site (which may include critical areas and critical area buffers) shall be retained.*

3. *Tree protection measures ensuring the preservation of all trees identified for retention on approved site plans shall be guaranteed during development through the posting of a performance bond equal to the value of the installation and maintenance of those protection measures.*

4. *The minimum amount of trees to be retained cannot be removed for a period of 36 months and shall be guaranteed through an approved maintenance agreement.*

5. *The Director may require the retention of additional trees to meet the stated purpose and intent of this title, as required by the critical areas regulations, Chapter 20.80 SMC, or Shoreline Master Program, SMC Title 20, Division II, or as site-specific conditions demand using SEPA substantive authority.*

4. Recommend the City Council's adopted 2018 amendment in Option 2 and add staff amendments to adjust the partially exempt trees to any parcel size, retained trees to be proportional to the lot coverage maximum, and clarify the criteria for a

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

tree retention reduction. The intent is to broaden the amendment to include all existing, non-exempt zones and MUR zones with proportional standards.

- Require tree retention and replacement in MUR-70' as well as MUR-35' and MUR-45' zones;
- Clarify that trees in the MUR zones cannot be removed beyond the partial exemption without a permit;
- Adjust the partial exemption to be proportional to any parcel size;
- Adjust the minimum tree retention percentage to be proportional to the maximum lot coverage allowed per zone; and
- Either allow the Director to reduce the number of trees that are required for retention by choosing one or more of the existing criteria in SMC 20.50.350.B.2 for reduction (instead of the applicant having to satisfy all criteria) or amend the criterion that states "strict compliance with the provisions of this Code may jeopardize reasonable use of the property" to instead state "strict compliance with the provisions of this Code will limit the full development potential of a property".

Option 4 Proposed Amendment Language:

SMC 20.50.310 Exemptions from permit.

A. Complete Exemptions. The following activities are exempt from the provisions of this subchapter and do not require a permit:

...

5. Removal of trees from property zoned NB, CB, MB and TC-1, 2 and 3, unless within a critical area or critical area buffer.

B. Partial Exemptions. With the exception of the general requirements listed in SMC 20.50.300, the following are exempt from the provisions of this subchapter, provided the development activity does not occur in a critical area or critical area buffer. For those exemptions that refer to size or number, the thresholds are cumulative during a 36-month period for any given parcel:

1. The removal of three (3) trees on lots at least 7200 square feet and 1 additional tree for every 7200 square feet of lot area ~~up to a maximum of six significant trees (excluding trees greater than 30 inches DBH per tree)~~ in accordance with Table 20.50.310(B)(1) (see Chapter 20.20 SMC, Definitions).

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

**Table 20.50.310(B)(1) — Exempt
Trees**

Lot size in square feet	Number of trees
Up to 7,200	3
7,201 to 14,400	4
14,401 to 21,780	5
21,781 and above	6

2. The removal of any tree greater than 30 inches DBH, or exceeding the numbers of trees specified in the table above, shall require a clearing and grading permit (SMC 20.50.320 through 20.50.370).

3. Landscape maintenance and alterations on any property that involve the clearing of less than 3,000 square feet, or less than 1,500 square feet if located in a special drainage area, provided the tree removal threshold listed above is not exceeded.

SMC 20.50.350 Development standards for clearing activities.

A. No trees or ground cover shall be removed from critical area or buffer unless the proposed activity is consistent with the critical area standards.

B. Minimum Retention Requirements. All proposed development activities that are not exempt from the provisions of this subchapter shall meet the following:

1. At least 20 percent of the significant trees on a given site parcel zoned R-4 or R-6 shall be retained, excluding critical areas, and critical area buffers, or
2. At least 15 percent of the significant trees on a given parcel zoned R-8 or R-12 shall be retained, excluding critical areas and critical area buffers, or
3. At least 10 percent of the significant trees on a given parcel zoned R-18, R-24, or MUR-35' shall be retained, excluding critical areas and critical area buffers, or

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

4. At least 5 percent of the significant trees on a given parcel zoned R-48, TC 4, MUR-45', or MUR-70' shall be retained, excluding critical areas and critical area buffers.
5. All trees in critical areas and their buffers shall not be removed unless allowed under the critical area regulations (SMC 20.80). Critical area significant trees are included in the minimum retention requirement. ~~At least 30 percent of the significant trees on a given site (which may include critical areas and critical area buffers) shall be retained.~~
6. Tree protection measures ensuring the preservation of all trees identified for retention on approved site plans shall be guaranteed during development through the posting of a performance bond equal to the value of the installation and maintenance of those protection measures.
7. The minimum amount of trees to be retained cannot be removed for a period of 36 months and shall be guaranteed through an approved maintenance agreement.
8. The Director may require the retention of additional trees to meet the stated purpose and intent of this title, as required by the critical areas regulations, Chapter 20.80 SMC, or Shoreline Master Program, SMC Title 20, Division II, or as site-specific conditions demand using SEPA substantive authority.

Exception 20.50.350(B):

1. The Director may allow a reduction in the minimum significant tree retention percentage to facilitate preservation of a greater number of smaller trees, a cluster or grove of trees, contiguous perimeter buffers, distinctive skyline features, or based on the City's concurrence with a written recommendation of an arborist certified by the International Society of Arboriculture or by the American Society of Consulting Arborists as a registered consulting arborist that retention of the minimum percentage of trees is not advisable on an individual site; or
2. In addition, the Director may allow a reduction in the minimum significant tree retention percentage if all of the following criteria are satisfied: The exception is necessary because:
 - There are special circumstances related to the size, shape, topography, location or surroundings of the subject property.
 - Strict compliance with the provisions of this Code ~~may jeopardize reasonable use of property~~ will reduce the full development potential of the parcel.

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

- Proposed vegetation removal, replacement, and any mitigation measures are consistent with the purpose and intent of the regulations.
- The granting of the exception or standard reduction will not be detrimental to the public welfare or injurious to other property in the vicinity.

3. If an exception is granted to this standard, the applicant shall still be required to meet the basic tree replacement standards identified in SMC 20.50.360 for all significant trees removed beyond the minimum allowed per parcel without replacement and up to the maximum that would ordinarily be allowed under SMC 20.50.350(B).

4. In addition, the applicant shall be required to plant four trees for each significant tree removed that would otherwise count towards the minimum retention percentage. Trees replaced under this provision shall be at least 12 feet high for conifers and three inches in caliper if otherwise. This provision may be waived by the Director for restoration enhancement projects conducted under an approved vegetation management plan.

C. Incentives for Higher Levels of Tree Protection. The Director may grant reductions or adjustments to other site development standards if the protection levels identified in subsection B of this section are exceeded. On a case-by-case review, the Director shall determine the balance between tree protection that exceeds the established minimum percentage and variations to site development requirements. If the Director grants adjustments or reductions to site development standards under this provision, then tree protection requirements shall be recorded on the face of the plat, as a notice to title, or on some other legal document that runs with the property. Adjustments that may be considered are:

1. Reductions or variations of the area, width, or composition of required open space and/or landscaping;
2. Variations in parking lot design and/or any access driveway requirements;
3. Variations in building setback requirements;
4. Variations of grading and stormwater requirements.

SMC 20.50.360 Tree replacement and site restoration.

A. Plans Required. Prior to any tree removal, the applicant shall demonstrate through a clearing and grading plan, tree retention and planting plan, landscape plan, critical area report, mitigation or restoration

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

plans, or other plans acceptable to the Director that tree replacement will meet the minimum standards of this section. Plans shall be prepared by a qualified person or persons at the applicant's expense. Third party review of plans, if required, shall be at the applicant's expense.

B. The City may require the applicant to relocate or replace trees, shrubs, and ground covers, provide erosion control methods, hydroseed exposed slopes, or otherwise protect and restore the site as determined by the Director.

C. Replacement Required. Trees removed under the partial exemption in SMC 20.50.310(B)(1) may be removed per parcel with no replacement of trees required. Any significant tree proposed for removal beyond this limit should be replaced as follows:

1. One existing significant tree of eight inches in diameter at breast height for conifers or 12 inches in diameter at breast height for all others equals one new tree.
2. Each additional three inches in diameter at breast height equals one additional new tree, up to three trees per significant tree removed.
3. Minimum size requirements for replacement trees under this provision: Deciduous trees shall be at least 1.5 inches in caliper and evergreens six feet in height.
4. Allow tree replacements to also meet landscape requirements in SMC 20.50.540.

Decision Criteria

SMC 20.30.350 states, "An amendment to the Development Code is a mechanism by which the City may bring its land use and development regulations into conformity with the Comprehensive Plan or respond to changing conditions or needs of the City". Development Code amendments may also be necessary to reduce confusion and clarify existing language, respond to regional and local policy changes, update references to other codes, eliminate redundant and inconsistent language, and codify Administrative Orders previously approved by the Director. Regardless of their purpose, all amendments are to implement and be consistent with the Comprehensive Plan.

The decision criteria for a Development Code amendment in SMC 20.30.350 (B) states the City Council may approve or approve with modifications a proposal for a change to the text of the land use code when all of the following are satisfied.

Staff Recommendation

6a. Staff Report - Tree Retention in MUR 70' Development Code Amendment

The Planning Commission's original 2017 recommendation to retain MUR-70' as an exempt zone from the tree code. Staff supports this recommendation for the following reasons:

- The Comprehensive Plan policies strongly support the full development of the Station Areas as urban, transportation-oriented development with people, jobs, and activities;
- MUR-35' and -45' zones are included in the station areas but are not exempt from tree regulations whereby preserving trees in the station areas;
- Developers have provided staff with feedback that the amendment that changed the exempt status for the MUR-70' zone in 2018 will thwart the planned redevelopment;
- Development standards for the station areas encourages development with 5-foot setbacks, right-of-way improvements, and underground parking such that the entire site will need to be graded; and
- Required landscaping standards will fill the remaining open space with trees that can adapt to the new environment and help succeed and replenish the existing, aging tree canopy.

Next Steps

June 7 – Continue study session with the Planning Commission

June 21- Public hearing and recommendations to the City Council
