



**MASTER BUILDERS
ASSOCIATION**
of King and Snohomish Counties

TREE CODES AND HOUSING



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Striking Balance Between Housing and Tree Canopy

Prepared by Master Builders Association of King and Snohomish Counties

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BACKGROUND

The Puget Sound region is facing a housing crisis – there is an urgent need to build more homes. Job and population growth are out of balance with the amount of available housing, which is pushing prices out of reach for many people. It also pushes people farther away from job centers to where they can find affordable housing thereby creating strains on the transportation system.

The Planning Goals codified in the Growth Management Act (GMA)¹ are intended to guide local jurisdictions in adopting comprehensive plans and development regulations to accommodate the population growth projected for the region. It is important that cities and counties keep these Planning Goals in mind as they plan for growth and enable the construction of housing, in particular the following Goals:

- **Housing:** “Plan for and accommodate housing affordable to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.”²
- **Property Rights:** “Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory action.”³
- **Permits:** “Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.”⁴
- **Urban Growth:** “Encouraging development in urban areas where adequate public facilities exist or can be provided in an efficient manner.”⁵

¹ The GMA directs local jurisdictions to accommodate most of the projected population growth in designated urban growth areas (UGAs) where there are “urban governmental services.” See RCW 36.70A.030(43)(defining “urban governmental services”). The GMA requires local governments to include in their comprehensive plans a Housing Element planning for a variety of housing types, particularly denser housing, and demonstrating how the jurisdiction is planning to accommodate the project population growth. See RCW 36.70A.070(2).

² RCW 36.70A.020(4).

³ RCW 36.70A.020(6).

⁴ RCW 36.70A.020(7).

⁵ RCW 36.70A.020(1).



Recognizing these Planning Goals and the current housing shortage some steps have been taken at the local, regional, and state levels to address the housing crisis. For example, at the state level the Washington State Legislature in 2019 passed House Bill (HB) 1923, creating a new state grant program through the Washington State Department of Commerce (Commerce) to help local jurisdictions adopt “Housing Action Plans.” Many cities [received grants](#) from Commerce to develop their Housing Action Plans.⁶ HB 1923 also addressed the housing affordability crisis by creating incentives to encourage production of more housing and a greater variety of housing types.

In 2023 – frequently dubbed the “Year of Housing” – the Legislature took several additional steps to deal with the housing crisis. The Legislature established minimum density requirements for local jurisdictions (HB 1110), required cities to accommodate up to two accessory dwelling units (ADUs) per lot (HB 1337), and required local jurisdictions to timely process permit applications and report annually as to whether they are meeting statutory deadlines (SB 5290).

As local jurisdictions work toward providing for development of much-needed housing they should take steps to insure they do not adopt policies that will unintentionally undermine the ability to achieve their housing goals. In advancing other important community priorities, which may include tree regulations, cities should review new policies through a housing lens to avoid any unintentional impacts on housing.

KEY CONSIDERATIONS IN REGULATING TREES



The GMA directs local jurisdictions to plan for growth to occur primarily within UGAs. The Puget Sound region desperately needs more housing supply within the UGAs to accommodate the growing population, especially near jobs, schools, transit, and other amenities. Trees are beautiful and vital: they help clean the air and cool down the streets in our urban areas and contribute to the overall aesthetics of a community. However, as cities look to enact and/or update tree codes, it is vital that they do not undermine or inhibit homebuilding with codes that are overly restrictive, and which make it more difficult to produce housing within UGAs.

It is vital that we work to avoid a future for the Puget Sound region that is marked by stifled homebuilding, chronic undersupply, and limited housing choices. Cities and counties can play their part to avoid this future by choosing instead to facilitate the permitting and construction of the diverse housing needed for healthy communities and a sustainable future. To accomplish this, tree codes and related policy initiatives must allow for, and not serve as a barrier to, smart homebuilding, density, and environmentally friendly housing. Local codes must also facilitate achieving the housing policies and goals reflected in the Housing Elements of comprehensive plans and in Housing Action Plans. With objective and predictable tree codes we can strike this balance and simultaneously promote a thriving tree canopy while delivering housing supply needed now and in the future.

MBAKS is committed to environmental stewardship and our belief that everyone deserves a place to call home. A healthy environment is fundamental to our region’s well-being. Through its new community stewardship program and tree planting event – [“Planting a Better Tomorrow”](#) – MBAKS strives to cultivate vibrant communities by strategically planting trees where they can thrive and enrich the lives of residents. It is important for local jurisdiction to balance housing and trees through regulations aimed at insuring “the right trees in the right place.”

⁶ The following cities in King and Snohomish counties have published or are developing Housing Action Plans: Algona, [Arlington](#), [Auburn](#), Bellevue, Bothell, [Burien](#), Carnation, Des Moines, Duvall, [Everett](#), [Federal Way](#), Issaquah, [Kent](#), Lake Stevens, [Lynnwood](#), Medina, [Monroe](#), [Mukilteo](#), North Bend, [Redmond](#), [Renton](#), [Sammamish](#), [SeaTac](#), [Seattle](#), [Shoreline](#), Snoqualmie, Stanwood, Tukwila.



HOW TREE CODES CAN AFFECT HOUSING

Many cities desire to protect their tree coverage as their population grows. This is often measured by tree canopy, which includes the branches, leaves, or other foliage from woody vegetation that provide shade. Several cities have or are considering implementing tree codes intended to maintain, and in some cases expand, the percentage of tree canopy beyond what even exists today.

Some cities assume that more dense development cannot coexist with goals to protect trees and tree canopy. Residents complain to local officials when a site is cleared for a new development. This has led some cities to adopt overly restrictive tree codes that inhibit the production of new housing at a level needed to meet the current and future demand. Indeed, these codes often run directly counter to a city's ability to deliver on its housing policies, goals and targets set out in Housing Elements of comprehensive plans and in Housing Action Plans. Many cities establish stringent requirements, onerous replacement ratios, and/or penalties on the removal of trees.



Moreover, it is important to consider that a home builder must comply with a myriad of other regulations, in addition to tree codes. These can include setbacks, critical areas regulations, regulations for stormwater management/drainage, access requirements, and design standards for access and roads. Under some tree codes-- especially those that focus on requiring the preservation of existing trees as opposed to allowing replacement or replanting--requiring the retention of a single tree can sometimes take an entire parcel off the map in areas zoned for housing if the city's code does not provide flexibility to account for all the other regulatory requirements. This can reduce the number of homes that otherwise could have been built. This is the case even when the net impact of removal can be effectively mitigated by thoughtful replanting on- or off-site, which would better support the long-term health of trees in the neighborhood. There are often other factors at play as well, including a desire by residents to oppose change and preserve their neighborhood's low-density character, which will only result in pushing new housing production to other communities farther out to the fringe and away from the job centers.

BALANCING TREE CODES AND RESPONSIBLE HOMEBUILDING

No matter how well-intentioned, tree codes that are unclear, ambiguous, and/or overly restrictive can have the unintended consequence of preventing or constricting new housing in areas that are opportune and appropriate for growth and where the GMA intends for such growth to occur. A good tree code lays the foundation to responsibly maintain or increase the tree coverage while also allowing for much-needed housing to be built.

A tree code should provide predictability for: property owners, developers and home builders in terms of what is required and how the code will be interpreted and applied to their property; city staff to provide a more efficient project review and not be required to make subjective interpretations of and determinations under the tree code; and the public's expectations as to how the code will be applied to proposed developments.



It is important to recognize there is not a one-size-fits-all approach for regulating trees. Cities should adopt smart, targeted, and flexible approaches when developing tree retention and replacement goals and policies and drafting or amending new tree codes. The following are key considerations in any decision-making process that will result in an effective, performance-oriented tree code:

- **Align tree codes with clear and objective standards for housing consistent with requirements in the GMA:**

The GMA requires cities to plan for and accommodate housing. In enacting or amending tree codes cities must develop and consider meaningful analysis regarding the total number of lots and housing capacity that will be affected by the proposed code, as well as potential impacts on a city's plan to meet its GMA growth targets. A city should re-think proposed tree code regulations if analysis and data shows that the regulations will have an adverse impact on housing.

- **Set clear and data-driven tree goals:**

Tree coverage goals should be based on local data and current and planned land uses. Consider determining the existing tree cover conditions using data, such as a LiDAR study, so there is a clear baseline against which to measure the impact of new or amended tree codes. This will allow the jurisdiction to set meaningful, objective goals and accurately track progress toward achieving those goals. [Snohomish County](#) has taken this approach, enabling it to quantify the effectiveness of its tree code with annual reporting.⁷ [King County's tree code](#) is also focused on outcomes.

- **Align code provisions with clearly stated tree goals:**

Ensure that tree code provisions have a direct relationship to the desired outcome of the code. If the desired outcome is primarily to retain and grow the tree canopy, then the code should focus on canopy targets and provide the applicant flexibility to determine how to achieve that through retention and/or replacement rather than requiring preservation of individual "significant," "landmark," or "heritage" trees.

A city should also take into consideration trees located in critical areas, open spaces, recreation areas, and street trees. For example, if there are trees in critical areas that must be preserved it is logical that they should also count towards meeting any tree credit or canopy requirement. By doing so, a property that is heavily encumbered by critical areas, or a project that provides significant open space, should have its remaining developable area available to meet housing needs. Requiring an applicant to meet the code requirements solely within the developable area will reduce density and negatively impact a city's ability to meet its housing targets.

- **Establish clear, objective procedures and regulations:**

For the benefit of applicants and staff, develop a tree code that is predictable, objective, and clear as to how an applicant can meet its requirements on a project. Providing property owners and builders with clear, objective and unambiguous regulations allows them to use and develop their properties with predictability and confidence. It should be clear from reading the code what it requires, and which trees may or may not be removed. Unclear, ambiguous codes lead to subjective and often inconsistent interpretations by city staff and needlessly lengthen the permit review process. Uncertainty in the permitting process increases risk for project applicants and extends construction timelines, making it more expensive to build a home. The more streamlined and predictable the process, the fewer costs accumulate due to project delay, resulting in more affordable homes for consumers.

- **Provide the applicant with flexibility to determine how to meet tree code requirements:**

⁷ The County's adopted its current tree code in 2014. The annual reports have shown that new development is exceeding the minimum tree canopy required by code and more existing trees are being retained.



Allowing flexibility to achieve tree coverage goals does not make a code any less effective at achieving its objectives, but it does allow for smarter, more cost-effective new home construction. Some properties are better suited for retaining trees, whether in groves or individual trees, as part of the development. Other properties can provide the best long-term results by focusing on planting new trees that complement new housing and infrastructure, and which trees will grow and age with the neighborhood. A tree code should provide flexibility to deal with either scenario.

The following are the two most effective approaches we have seen cities and counties adopt:

- **Canopy system:** Setting an overall canopy target that an applicant can meet by either retaining existing trees, planting new trees, or a combination of both, is an effective way to manage tree goals. As with a tree credit system, this can help achieve a city's goals in the short and long term, while providing flexibility and balance with competing GMA Planning Goals. This approach is objective, provides applicants flexibility, and avoids subjective interpretations by staff that can needlessly extend the permit review process. Snohomish County implemented a tree code based on the canopy system in 2014 that is working well.
- **Tree credit system:** Setting a reasonable number of tree "credits" to be provided for a property is also an effective, and objective way to manage tree goals and encourage tree retention. The code can incentivize retaining existing trees by providing more credits for retention than new trees. It can also incentivize retaining trees in desired locations or groupings by providing more credits for trees in groups or in setbacks. King County and the City of Bellevue are examples of jurisdictions that have successfully implemented tree codes using the tree credit system.

These systems must remain functionally flexible to achieve their purpose: adding additional requirements undermines their ability to work as intended. For example, a credit or canopy system should not include additional requirements to retain some or all trees over a certain size (referred to as "significant" trees and in some cases "landmark" or "heritage" trees) or certain groupings of trees. Retention requirements in addition to a tree credit or tree canopy requirement will result in longer permit review times and increase the project cost and ultimately the price of housing. A well-balanced and effective tree code will also provide flexibility to allow for **off-site replanting** and a **fee-in-lieu** paid into a tree account as an alternative to replanting some or all required trees on the project site.

- **Respect private property rights:**

Private property owners need a range of options to maintain and improve their properties, contribute to the community's housing needs, and advance the city's tree goals. New or amended tree regulations should not either unnecessarily limit the development potential of a property or constitute a taking of property rights. There is well-settled law that mitigation or other requirements under development regulations must have a reasonable relationship to the impacts of a proposed development and be "roughly proportional" to the impacts of a proposed development.

A Snohomish County Superior Court Judge recently held in *Rimmer v. City of Edmonds* that the city imposed an unconstitutional taking by conditioning issuance of a building permit on the applicant (i) providing 2 replacement trees for removal of a single ornamental dogwood tree that was deemed a significant tree under the tree code and (ii) recording a notice on title regarding the code restrictions on removing or trimming the replacement trees. A summary of the *Rimmer* decision can be found [HERE].

Tree codes should have provisions to consider site-specific conditions. The Washington Supreme Court [previously struck down](#) a blanket lot clearing restriction that did not take account of the



impacts of clearing on any given site.⁸ Cities must also take into consideration the U.S. Supreme Court's decision from April 2024, in *Sheetz v. El Dorado County*. A summary of the *Sheetz* decision can be found [HERE]. MBAKS addresses legal considerations regarding the regulation of trees in 2 Legal Briefs: "Legal Brief – Tree Regulation Part I: Legal Issues and Considerations Regarding Tree Retention/ Replacement Regulations in Washington"; and, "Legal Brief – Tree Regulations Part II: Case Law Outside Washington Regarding Local Tree Retention/Replacement Regulations."

To address these legal concerns, MBAKS strongly urges and recommends that a city include in its tree code language providing that the tree retention/replacement requirements will not be interpreted or applied in a manner that would either (1) reduce maximum allowed density, the number of allowed lots, and/or the maximum allowed floor area ratio (FAR) or lot coverage, (2) preclude the ability to construct middle housing and/or ADUs, or (3) preclude required access and utility connections.⁹

WHAT TO AVOID WHEN DEVELOPING/AMENDING TREE CODES

In addition to with the guiding principles outlined above as to what MBAKS recommends cities consider or include when adopting or amending tree codes, there are also specific policies that cities should avoid in their tree codes:

- **Mandatory retention requirements:** Local governments should not impose mandatory requirements regarding the retention of existing trees. These requirements often include required retention of: a certain specified percentage of existing trees on the project site; trees of a certain size (e.g. "significant," "landmark" or "heritage" trees); certain groupings or groves of trees; and/or trees in certain locations.
 - These types of requirements dramatically limit design flexibility, thereby preventing the most responsible and efficient development of property. Requiring a set number or percentage of trees to be retained can reduce the amount of housing that can be developed significantly below what the neighborhood's zoning allows. This is especially important if the tree code does not permit trees to be removed in areas of the property that are needed to comply with other applicable code regulations for access/roads, stormwater/drainage facilities and other infrastructure, and road design standards.
 - Mandatory retention requirements do not appropriately take into consideration the fact that some properties are well-suited for denser housing and are currently heavily treed. At the same time, other properties that will not provide density might have fewer trees today.
 - Many of the now-mature trees in our region were planted with the last generation of housing and grew into the current urban and suburban environment. Their size, type, or location may not be well-suited for a new home or community. In many cases, retaining individual existing trees or small groups also creates future hazards for the homeowner, neighboring property owners and the community generally, whereas new trees can be planted in considered locations where they can grow unimpeded as the new development

⁸ *Citizens All. for Prop. Rights v. Sims*, 145 Wash. App. 649, 187 P.3d 786 (2008).

⁹ The City of Kirkland adopted similar language in December 2023, which is now codified as Kirkland Zoning Code § 95.30.6.



matures. Allowing a mixture of tree retention and new plantings can provide benefits for the next generation.

- **Reliance on code deviations to provide flexibility:** Allowing deviations to mandatory retention requirements for certain tree types, trees in certain locations (e.g., groves, in setbacks), or trees of specified sizes is not an effective way to provide flexibility into a tree code. Tree codes often lack objective criteria for granting such deviations, which results in subjective and inconsistent decisions as to when a deviation will be approved. Relying on deviations adds another approval step and introduces more uncertainty to the permitting process.
- **Unclear, undefined and ambiguous code provisions that can result in staff subjectively interpreting code requirements:** Decisions about tree retention or where new trees must be planted should not be left to the subjective determination of staff. This undermines predictability. As noted above, an effective tree code should be sufficiently clear and objective regarding what is allowed and not allowed. Where discretion is provided by the tree code there should be objective criteria for determining how that discretion will be exercised.

TOOLS & RESOURCES

Legal Brief – MBAKS – Part 1 Legal Issues and Considerations re Tree Regulation in WA	Link to resource
Legal Brief – MBAKS – Part 2 The Evolving Case Law Regarding Tree Regulation Around the US	Link to resource
Housing and Trees Fact Sheet	Link to resource
MBAKS Tree Advocacy – Planting a Better Tomorrow	Link to resource
Housing and Trees Video	Link to resource