

City of Bellevue



STAFF REPORT

DATE: April 24, 2024

TO: Chair Bhargava and Members of the Planning Commission

FROM: Nick Whipple, Assistant Director, 452-4578
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Development Services Department

SUBJECT: Public Hearing on a Land Use Code Amendment (LUCA) to update tree preservation, retention and protection provisions to better support citywide tree canopy goals. The LUCA advances the City's Environmental Stewardship Plan Strategy N-1. File No. 22-128467-AD.

I. BACKGROUND

The proposed LUCA will amend provisions in chapters 20.20, 20.25A, 20.25B, 20.25F, 20.25Q and 20.50 of the Land Use Code (LUC) to update tree preservation, retention, replacement, and protection provisions to better support citywide tree canopy goals. Attachment A is a strike-draft of the proposed LUCA.

Bellevue's Environmental Stewardship Plan Action N.1.1 calls to introduce additional requirements for tree preservation to further support the achievement of the 40 percent tree canopy goal. This action includes a comprehensive review and update of provisions in the LUC and Bellevue City Code (BCC) for tree preservation, retention, replacement, and protection during construction.

Bellevue's tree canopy is a critical environmental asset and central to the vision of a "City in a Park". Tree retention requirements were first added to the LUC in the 1980s. Since then, the City's code provisions related to trees have been updated periodically, but never in a comprehensive fashion.

II. PROPOSED LUCA

This LUCA updates tree preservation, retention and protection provisions to avoid net canopy loss as the city grows, provide more consistency in tree canopy across neighborhoods, and maintain flexibility for planned development capacity. This section describes the major components of the LUCA.

Significant and Landmark Tree Definitions

Only Significant and Landmark trees are subject to Bellevue's tree regulations. Currently, Significant Trees are defined as healthy trees with a minimum diameter at breast height of at least eight inches. Stakeholders and the City's technical consultant have noted that most other jurisdictions in the region set the minimum diameter at six inches. In addition, the term "healthy" is not defined in the code. Staff recommend reducing the minimum diameter for Significant Trees to six inches for consistency with the region, and to extend protections to smaller trees as

they grow. Staff also recommend using the term “viable” instead of “healthy, and have provided criteria which a Qualified Tree Professional can use to determine the viability of a tree.

Landmark Trees are defined through an interim ordinance as healthy trees with a minimum diameter at breast height of at least 24 inches, and at least 20 feet tall. For the proposed permanent definition, staff recommend retaining the minimum 24 inch diameter, but removing the minimum height requirement. Instead, the definition will reference the viability criteria. The proposed definition also has several alternate, smaller minimum diameter definitions for several slow-growing native tree species which provide significant long term benefits but rarely achieve a 24 inch diameter. Finally, Alder and Cottonwood trees are ineligible for Landmark Tree status.

Minimum Tree Density

Under current tree retention regulations, applicants must retain a percentage of the significant trees on site at the time of application. Heavily forested sites may lack sufficient flexibility to develop while meeting requirements, while there are no provisions to require planting trees on sites without trees, unless other landscaping requirements apply.

The LUCA proposes that applicants must instead maintain a minimum tree density, measured in tree credits. The minimum tree credits scale with the size of property, land use district, and use. While the minimum canopy can be achieved through retaining trees, planting trees, or a mixture of the two, the intent is for applicants to first retain trees before planting.

Retained Trees

Retained trees receive tree credits based on their diameter at breast height, with a 50% discount for alders and cottonwoods. The LUCA provides guidance to prioritize preserving Landmark Trees and groves of trees. Certain trees are not eligible for tree credits, including invasive or noxious species.

Planted Trees

Planting trees is an option to achieve the minimum tree density when a site lacks sufficient existing trees. If a site lacks sufficient existing trees, any existing viable significant trees can only be removed if necessary to achieve the development density, if a qualified tree professional determines they are hazardous or inappropriate for retention, or the site is located in a wildland-urban interface and removing trees is necessary to maintain defensible space requirements. If a site is lacking existing trees and trees were removed within the previous three years, all trees must be replanted at a rate of 1:1 for significant trees or 2:1 for landmark trees, unless replanting is already required previously.

Each newly planted tree meeting certain size standards provides 1 tree credit. Plantings shall be appropriate for the climate, topography, and hydrologic characteristics of the site, in the written opinion of a qualified tree professional. Planting invasive or noxious species is prohibited. Any trees planted or retained to meet other requirements count toward the minimum tree density, although other planting requirements may not be reduced if the property exceeds the minimum tree density.

An in-lieu fee is proposed as a last resort option when an applicant demonstrates that all planting options have been considered and are infeasible. The director will verify when in-lieu fees are appropriate. Staff are developing the initial fee amount, which will be based on the cost of a new tree, installation, maintenance for three years, and fund administration.

Dimensional Standard Modification

The LUCA proposes limited flexibility for certain development standards in certain circumstances. These are:

- Reduced parking, if the reduction will enable preserving a grove or landmark trees, and the project will exceed the minimum required density.
- Extending five feet into the required rear yard or 50% into the required front yard when the maximum development density cannot be achieved, the modification will enable the applicant to retain additional landmark trees or a grove beyond the required minimum, or the proposal is for affordable housing and will exceed the required minimum.

Tree Protection

Applicants are required to use tree protection techniques during construction, which are to be identified in the required tree protection plan. This requirement is established in the Bellevue City Code and will be updated with the associated Bellevue City Code Amendment.

If an applicant is granted modifications to development standards to retain specific trees, the applicant is required to record a covenant prohibiting development within any portion of any tree protection zone. If an applicant had to plant new trees to achieve minimum density, a three year maintenance assurance device may be required by the Director.

Applicable Procedures

The proposed minimum tree density requirements would be imposed under the same circumstances as existing tree retention requirements. These are any time a permit, approval, or review for development activity is required by the Bellevue City Code or Land Use Code. Development activity means any alteration or development regulated by the Bellevue City Code or Land Use Code, including subdivisions, short subdivisions, planned unit developments, changes in lot coverage, changes in the area devoted to parking and circulation, and additions to impervious surface areas that exceed 20 percent.

III. REVIEW PROCESS

The content of the LUCA was divided into five topics for review: (1) Purpose, Applicability and Required Review; (2) Section-Specific Definitions; (3) General Definitions; (4) Minimum Tree Density; and (5) Tree Protection. In the January 24 Study Session, the Planning Commission was introduced to the proposed LUCA structure, and considered Topics 1 and 2. The Planning Commission raised comments and questions about improving the process of reporting violations; keeping permit costs and regulatory complexity down; facilitating missing middle housing development; ensuring retained trees are maintained; leaning on incentives to discourage landmark tree removal; and providing a development assurance statement.

In the March 27 Study Session, the Planning Commission considered Topics 3, 4 and 5. The Planning Commission expressed interest in further discouraging alder and cottonwood trees, offering flexibility for height to facilitate tree retention, evaluating an expanded maintenance period, and continuing to focus on enforcement. After discussion, the Planning Commission directed staff to schedule the required public hearing for this proposed LUCA.

This Staff Report provides an analysis of the proposed LUCA so that the public may comment and the Planning Commission may consider the entirety of the LUCA. Following the public hearing, the Planning Commission will be asked to make a recommendation to approve the

proposed LUCA, with or without modifications, for transmittal to the City Council. The City Council is anticipated to consider the LUCA and the Planning Commission Recommendation at a future meeting.

IV. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The application for SEPA review was noticed together with the notice of public hearing for the proposed LUCA on April 4, 2024. The environmental review indicates no probability of significant adverse environmental impacts occurring as a result of the LUCA. The City's SEPA Responsible Official is issuing a Determination of Non-Significance (DNS) pursuant to the threshold determination requirements in WAC 197-11-310.

V. PUBLIC ENGAGEMENT

Required Public Notice

The notice required for City Council Legislative Actions (Process IV) is governed by LUC 20.35.415 through 20.35.450. Notice of the LUCA application, was published in the Weekly Permit Bulletin on December 8, 2022, and availability of the Weekly Permit Bulletin was noticed in the Seattle Times. Notice of the Public Hearing and SEPA determination was published in the Weekly Permit Bulletin on April 4, 2024, along with availability of this staff report. The notice of public hearing was also provided to those individuals who have subscribed to receive these notices and those who have expressed interest on this topic.

Department of Commerce Notice

Pursuant to the Washington State Growth Management Act, proposed amendments to the LUC must be sent to the Washington State Department of Commerce to review and comment on the proposed amendments to the LUC. The required notice to the Department of Commerce and the initial draft LUCA were transmitted on March 28, 2024, and a copy of both documents is available for review in the code amendment file. No comments have been received by Commerce as of the date of this report.

Enhanced Public Engagement

In addition to the requirements of LUC 20.35.415 *et seq* for City Council Legislative Actions, staff has provided enhanced public outreach for this LUCA to include an online presence. A webpage was launched for this LUCA to provide opportunity for the public to learn about the LUCA, with sections on public information messages regarding the LUCA progression, and staff contact information to submit written comments.

Staff held in-person public information sessions on June 8, 2023 and January 11 to share information and answer questions with the general public. In addition, staff held a series of small group listening sessions to gather input from project stakeholder groups, including the development community, environmental advocacy groups, and local residents. An online questionnaire was open from May 17, 2023 to June 12, 2023 to gather perspectives on priorities for the project from the general public, and received 687 complete responses.

As of the date of this staff report, staff have received numerous comments and feedback. Most comments received to date have been supportive of this effort. Commentors have shared

concerns including providing greater flexibility for development, avoiding the impacts of excessive cost or regulation, preserving the right to make decisions about private trees for property owners, and a desire to go further to protect larger trees.

VI. DECISION CRITERIA

LUC 20.30J.135 establishes the decision criteria for an application to amend the text of the LUC. Those criteria, and the relationship of these proposed amendments to them, are discussed below:

A. The amendment is consistent with the Comprehensive Plan; and

Finding: The proposed LUCA is consistent with the Comprehensive Plan. The amendment will better align the City's development regulations with its goal of maintaining at least 40% canopy coverage, and ensuring the long term vitality of Bellevue's forest resources. The proposed LUCA is supported by the following Comprehensive Plan policies:

Policy LU-2. Retain the city's park-like character through the preservation and enhancement of parks, open space, and tree canopy throughout the city.

Policy EN-12. Work toward a citywide tree canopy target of at least 40% canopy coverage that reflects our "City in a Park" character and maintain an action plan for meeting the target across multiple land use types including right-of-way, public lands, and residential and commercial uses.

Policy EN-71. Preserve a proportion of the significant trees throughout the city in order to sustain fish and wildlife habitat.

Policy PA-31. Manage Bellevue's forest resources, including street trees, formal plantings, and self-sustaining natural stands, to ensure their long term vitality.

B. The amendment enhances the public health, safety or welfare; and

Finding: The proposed LUCA will enhance the public health, safety and welfare of people in the City. Trees provide positive benefits for public health, including mitigating heat island effects and reducing air pollution. These benefits are magnified for large trees and groves of trees, and the proposed LUCA provides additional incentives to encourage retaining landmark trees and groves.

C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

Finding: The proposed LUCA is not contrary to the interests of citizens and property owners of the City. The proposal has significant public health benefits, and has strong support from the community. The proposal also includes sufficient development flexibility to prevent impacts to housing development.

VII. RECOMMENDATION

Staff has concluded that the Tree Canopy LUCA to update tree preservation, retention and protection provisions to better support citywide tree canopy goals, as drafted in Attachment A, is consistent with the decision criteria required for adoption of amendments to the text of the LUC, pursuant to Part 20.30J LUC. Staff recommends that the Planning Commission directs staff to prepare the LUCA for recommendation to Council.

ATTACHMENTS:

A. Proposed LUCA Strike-Draft