

**CITY OF BURIEN, WASHINGTON**

**ORDINANCE NO. 780**

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**AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, AMENDING TREE AND LANDSCAPING REGULATIONS IN THE BURIEN MUNICIPAL CODE TITLE 19, ZONING CODE, AND PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.**

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**WHEREAS**, the proposed amendments are intended to provide minimum standards for tree retention and landscaping to foster a healthy and attractive community, to increase canopy cover in an equitable manner across the city; to maintain a positive community image, improve the aesthetic quality of the built environment, enhance quality of life, protect and enhance property values, promote retention and protection of existing vegetation, reduce the impacts of development on drainage systems and natural habitats, absorb wind and noise, enhance air quality, increase compatibility between different land uses, conserve valuable water resources, and to increase privacy for and within residential zones;

**WHEREAS**, the Planning Commission held public meetings on January 13, 2021, March 24, 2021, April 14, 2021, May 12, 2021, April 13, 2022, July 13, 2022, and July 27, 2022 to discuss the proposed amendments;

**WHEREAS**, the City of Burien provided public notice and the City of Burien Planning Commission held a public hearing on October 13, 2021, about the proposed Zoning Code amendments;

**WHEREAS**, the City of Burien provided public notice and the City of Burien Planning Commission held a public hearing on August 10, 2022, about the proposed Zoning Code amendments;

**WHEREAS**, on Insert Date the Planning Commission gave the City Council recommendations regarding these proposed amendments;

**WHEREAS**, the City of Burien has complied with the requirements of the State Environmental Policy Act and the City Environmental Procedures Code;

**WHEREAS**, the City of Burien provided the proposed Zoning Code text amendments to the Washington State Department of Commerce on June 7, 2021, and supplemental submittal on July 8, 2022 and did not receive comments;

**WHEREAS**, based on careful consideration of the facts and law, including without limitation, public testimony and the records and files on file with the City Clerk's office, and staff memorandum included as the attached Exhibit A; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section One.** A new definition, 19.10.093, entitled **Critical root zone**, of the Burien Municipal Code is created to read as follows:

The critical root zone (CRZ) is an area around the tree equal to one (1) foot radius from the center point of the tree for each one (1) inch of tree trunk diameter measured at the diameter at standard height (DSH). For example, a tree with a twenty (20) inch diameter at standard height would have a CRZ with a twenty (20) foot radius and a forty (40) foot diameter.

**Section Two.** A new definition, BMC 19.10.094, entitled **Critical root zone, inner**, of the Burien Municipal Code is created to read as follows:

The inner critical root zone (ICRZ) is an area around the tree that is equal to a half (0.5) foot radius from the centerpoint of the tree for each one (1) inch of tree trunk diameter measured at DSH. This is equivalent to half of the radius of the CRZ. This is an area with a high concentration of structural roots critical to the stability and health of the tree.

**Section Three.** Definition **19.10.174.2**, entitled **Fee-in-lieu**, of the Burien Municipal Code is amended as follows with the remaining language remaining the same:

~~[The Fee-in-Lieu]~~A fee-in-lieu program allows commercial development in certain zones, under some circumstances, to pay a fee for each parking space that otherwise would have been required, rather than construct the parking space. A tree replacement fee-in-lieu provides the option to pay a fee for trees that are otherwise required to be planted.

**Section Four.** A new definition, BMC 19.10.341, entitled **Measurement of tree diameter at standard height**, of the Burien Municipal Code is created to read as follows:

Diameter at standard height (DSH), which means the diameter of a tree trunk measured at 4.5 feet above average grade, is used in determining the diameter of existing trees. Where a tree has a branch(es) or swelling that interferes with the measurement at 4.5 feet above average grade or where a tree tapers below this point, the diameter is measured at the narrowest point below 4.5 feet. For trees located on a slope, the 4.5 feet is measured from the average of the highest and lowest ground points or, on very steep slopes where this is not possible, the lowest

practical point on the uphill side. Where a tree splits into several trunks close to ground level, the DSH for the tree is the square root of the sum of the DSH for each individual stem squared (example with 3 stems:  $DSH = \text{square root} [(stem1)^2 + (stem2)^2 + (stem3)^2]$ ).

**Section Five.** Definition 19.10.408, entitled **Prohibited tree** is renamed **Prohibited plants and trees list** of the Burien Municipal Code is amended as follows:

~~[– Black locust (*Robinia pseudoacacia*), Cottonwood (*Populus trichocarpa*), Native alder (*Alnus glutinosa*), Native willow (*Salix*), Lombardy poplar (*Populus nigra* ‘*Italica*’), and European ash (*Fraxinus excelsior*) are prohibited in new land development landscaping or as a required replacement tree on private and public property. An existing prohibited tree shall be included on tree retention plans and counted as a significant tree if meeting the definition in BMC 19.10.493.]~~ A list prepared by King County containing plants and trees listed as ‘Class A noxious weeds’, ‘Class B noxious weeds’, ‘Class C noxious weeds’, ‘Non-regulated noxious weeds’ and ‘Weeds of concern’. Though not regulated by the state and county, these plant and tree species listed by King County as ‘non-regulated’ and ‘weeds of concern’ impact and degrade native plant and animal habitat in open spaces and parks. Any plant or tree deemed as not suitable to be used for new landscape or as required replacement trees at the discretion of the Director.

**Section Six.** A new definition, BMC 19.10.432, entitled **Qualified tree professional**, of the Burien Municipal Code is created to read as follows:

A qualified tree professional is: An individual with relevant education and training in arboriculture or urban forestry, having the International Society of Arboriculture (ISA) Tree Risk Assessment Qualification and one of the following credentials:

1. ISA certified arborist;
2. ISA certified arborist municipal specialist;
3. ISA board certified master arborist;
4. American Society of Consulting Arborists (ASCA) registered consulting arborist (RCA);
5. Society of American Foresters (SAF) certified forester for forest management plans.

A qualified arborist must also be able to prescribe appropriate measures for the preservation of trees during land development. Any provision in this title referring to using an arborist or

qualified arborist or tree professional or qualified professional shall be interpreted to require using a qualified tree professional.

**Section Seven.** A new definition, BMC 19.10.433, entitled **Qualified tree risk assessment report**, of the Burien Municipal Code is created to read as follows:

A report prepared by a qualified tree professional that considers crown size, health, structure, disease, past maintenance practice, potential damage to existing targets, risk mitigation options, and, when development is proposed, the likelihood of survival after construction. To undertake tree risk assessment as part of a development application, a qualified tree professional shall have a minimum of 3 years' experience in directly with the protection of trees during construction.

**Section Eight.** Definition 19.10.493, entitled **Significant tree**, of the Burien Municipal Code is repealed in its entirety

**Section Nine.** A new definition, BMC 19.10.545.1, entitled **Tree**, of the Burien Municipal Code is created to read as follows:

A woody plant, that has one or several dominant trunks, each with a diameter at standard height of 3 inches or greater, that reaches a mature height greater than 15 feet.

1. **Tree, Exceptional:** Any tree 30 inches diameter at standard height, any tree identified in Table 19.26.040-1, or a tree designated as a Heritage Tree.
2. **Tree, Hazard:** A hazard tree is a tree that meets all the following criteria:
  - A. A tree with a combination of structural defects and/or disease which makes it subject to a high probability of failure;
  - B. Is in proximity to moderate to high frequency targets (persons or property that can be damaged by tree failure);
  - C. The assessed tree has a high to extreme risk rating using the International Society of Arborists Tree Risk Assessment Qualification (TRAQ) method in its most current form; and
  - D. The hazard condition of the tree cannot be lessened with reasonable and proper arboricultural practices, nor can the target be removed or restricted.
3. **Tree, Healthy:** A tree with less than twenty five percent (25%) crown decline and dieback of the canopy, with normal leaf development, although minor deficiencies might be present. Minor pest problems might be present, but controllable. Minor

trunk or branch defects might be present, but with good response wood or wound closure.

4. **Tree, Significant:** An existing healthy tree which, when measured at the diameter at standard height, has a minimum diameter of six (6) inches and is not an exceptional tree. Hedges made of Leyland cypress (*Cuprocyparis leylandii*), arborvitae (*Thuja occidentalis*), laurel (*Prunus lusitanica* and *Prunus laurocerasus*), or holly (*Ilex aquifolium*) are not considered to be significant trees and may be trimmed or removed. Any tree on the prohibited plants and trees list (BMC 19.10.408) is not considered a significant tree.

**Section Ten.** A new definition, BMC 19.10.545.2, entitled **Tree protection zone (TPZ)**, of the Burien Municipal Code is created to read as follows:

The Tree Protection Zone (TPZ) is equal to the critical root zone or an area sufficient to protect the tree during and after development as recommended by a qualified tree professional.

**Section Eleven.** A new definition, BMC 19.10.545.3, entitled **Tree pruning**, of the Burien Municipal Code is created to read as follows:

The intentional removal of a tree's branches in order to reduce the live canopy of the tree by no more than twenty five percent (25%) during any consecutive twelve (12) months, in accordance with the current version of ANSI A300 Part 1. Pruning Specifications. Trimming more than twenty five percent (25%) of a tree's canopy during any consecutive twelve (12) months is considered to be tree removal.

**Section Twelve.** A new definition, BMC 19.10.545.4, entitled **Tree topping**, of the Burien Municipal Code is created to read as follows:

The act of removing whole tops of trees, or indiscriminate removal of large branches and/or trunks from the tops of trees and leaving stubs or lateral branches that result in the disfigurement of the canopy and compromises the health and structure of the tree. Tree topping is considered to be tree removal.

**Section Thirteen.** A new definition, BMC 19.10.547.5, entitled **Undeveloped lot**, of the Burien Municipal Code is created to read as follows:

A lot on which no improvements, no infrastructure, no facilities, no legally established land use, and no grading or site development exist.

**Section Fourteen.** Chapter 19.25, entitled **Tree Retention and Landscaping**, of the Burien Municipal Code is retitled Landscaping and is amended as follows with the remaining language remaining the same:

**Chapter 19.25**

**~~[Tree Retention and]~~ Landscaping**

**Section Fifteen.** Section 19.25.020, entitled **Purpose**, of the Burien Municipal Code is amended as follows with the remaining language remaining the same:

The purpose of this chapter is to provide minimum standards for ~~[tree retention and]~~ landscaping to foster a healthy and attractive community; to maintain a positive community image; to improve the aesthetic quality of the built environment; to enhance quality of life; to protect and enhance property values; to promote retention and protection of existing vegetation; to reduce the impacts of development on drainage systems and natural habitats; to absorb wind and noise; to enhance air quality; to increase compatibility between different land uses; to conserve valuable water resources; and to increase privacy for and within residential zones by:

4. Retaining existing vegetation and significant trees by incorporating them into the site design; ~~and]~~
5. Promoting water-efficient landscaping through the use of appropriate native or climate-adapted trees and vegetation, which, once established, typically require less water; and
- ~~[5]~~6. Providing increased areas of permeable surfaces to allow for:

**Section Sixteen.** Section 19.25.040, entitled **Landscaping Categories**, of the Burien Municipal Code is amended as follows with the remaining language remaining the same:

1. The use zone charts in BMC 19.15 establish a landscaping category for each use in each zone. Table 19.25.040-1 indicates the requirements that must be met for each landscape category. If different landscape categories apply to a site, the category that provides for the most landscaping shall apply.

Table 19.25.040-1

Landscape Category	Along Property Line Abutting a Public <u>Right-of-Way</u> (Except a Freeway or <u>Alley</u> )	Along Property Line Abutting a Freeway*	Along All Other Property Lines (Except Along an <u>Alley</u> )	Along Building Facade Greater Than 35' High or 50' Wide	Surface Parking Area Landscaping Required? (see BMC <u>19.25.070</u> )
A	None	None	None	None	No
B	10' wide Type III	10' wide Type II	None, except in a transition area (see BMC 19.17.015)	5' wide Type IV	Yes
C	10' wide Type III	10' wide Type II	None, except in a transition area (see BMC 19.17.015)	5' wide Type IV	Yes
D	15' wide Type I	10' wide Type I	10' wide Type II, except when abutting an I zone, then none	5' wide Type IV	Yes
E	See BMC 19.47 and 19.49 for landscaping requirements in the DC and SPA-1 zones. The only sections of BMC 19.25 and 19.26 that apply to the DC and SPA-1 zones are: BMC 19.25.080, 19.25.100, 19.25.110, [ <del>19.25.170 and 19.25.180.</del> ] 19.26.040, and 19.26.070 through 19.26.160.				
F**	25' wide, Type II (along 8th Ave. So. or Des Moines Memorial Dr.); otherwise, 15' wide, Type III	None	50' wide Type I (along northern perimeter of the AI zone); otherwise, 10' wide Type III	5' wide Type IV	Yes

3. Properties abutting Des Moines Memorial Drive are also subject to BMC 19.25.060(2)

**Section Seventeen.** Section 19.25.050, entitled **Landscaping – Types and description**, subsection 4.B., of the Burien Municipal Code is amended as follows with the remaining language remaining the same:

B. Type IV landscaping shall consist of:

- i. Canopy-type deciduous trees spaced no more than 30 feet on center, or evergreen trees spaced no more than 25 feet on-center. At least 70 percent of the trees shall be deciduous.
- ii. Shrubs that do not exceed a height of four feet;

- iii. Plantings contained in planting islands or strips having an area of at least 75 square feet and with a narrow dimension of no less than four feet;
- iv. Groundcover pursuant to BMC 19.25.090[-];
- v. Canopy trees shall be placed far enough away from parking lot lights to account for future canopy growth and ensure that trees will not obstruct parking lot lighting. Canopies at mature growth shall be shown on a site plan to demonstrate compliance with this provision.

**Section Eighteen.** Section 19.25.060, entitled **Landscaping – Street frontages**, subsection 1.E., of the Burien Municipal Code is created as follows with the remaining language remaining the same:

E. Trees shall be placed far enough away from streetlights to account for future canopy growth and ensure that trees will not obstruct lighting. Trees planted under powerlines shall be small enough upon maturity to provide sufficient clearance per local utility regulations and best management practices. Canopies at mature growth shall be shown on a site plan to demonstrate compliance with this provision.

**Section Nineteen.** Section 19.25.060, entitled **Landscaping – Street frontages**, subsection 2, of the Burien Municipal Code is created as follows:

2. For properties abutting Des Moines Memorial Drive:

A. When work along the right-of-way by the adjacent property owner or their representative requires the removal of existing elm trees (*Ulmus* spp.), the applicant shall consult with Burien Public Works Department to determine where replacement elm trees shall be planted to be consistent with the Des Moines Memorial Drive Corridor Management Plan. If the replacement elm trees cannot be planted within the right-of-way due to limited right-of-way width, utility conflicts, etc., the elm trees shall be planted on private property adjacent to the public right-of-way.

B. When work within a property adjacent to Des Moines Memorial Drive requires new trees to be planted to meet the required minimum tree credits pursuant to BMC 19.26.050 or to plant replacement trees pursuant to BMC 19.26, the applicant shall plant elm trees on their property when the right-of-way adjacent to the site does not contain the elm trees required by the Des Moines Memorial Drive Corridor Management Plan, and the elm trees cannot be planted within the right-of-way due to

limited right-of-way width, utility conflicts, etc. The applicant shall consult with Burien Public Works Department to determine where the elm trees shall be planted.

C. Species of trees to be planted and location of plantings shall be determined by the Burien Public Works Director in accordance with the Des Moines Memorial Drive Corridor Management Plan.

D. Replacement trees shall have a minimum caliper of 2.5 inches and shall follow replanting specifications in BMC 19.26.100(7)(C) and 19.26.100(7)(D).

E. Any elm trees planted on private property pursuant to this code provision shall be credited toward the lots' minimum tree credits and replacement tree calculation.

**Section Twenty.** Section 19.25.080, entitled **Landscaping – General Requirements**, subsection 1 and 2, of the Burien Municipal Code is amended as follows with the remaining language remaining the same:

1. A landscaping ~~[and irrigation plan]~~ shall be submitted for review and approval by the Director. Written requirements for the landscaping ~~[and irrigation plan]~~ shall be established by the Director. The landscaping and irrigation plan shall be prepared by a Washington State registered landscape architect, Washington Certified Nurseryman/Landscaper, or other qualified landscape designer as authorized by the Director. ~~[The irrigation plan may be prepared by a certified irrigation designer.]~~

2. New landscaping materials shall include species native to the Pacific Northwest or non-native, non-noxious ~~[noninvasive]~~ species that have adapted to the climatic conditions of the coastal region of the Pacific Northwest in the following minimum amounts:

A. Seventy-five percent of groundcover and shrubs, and

B. Fifty percent of trees;

**Section Twenty-one.** Section 19.25.080, entitled **Landscaping – General Requirements**, subsection 5 and 6, of the Burien Municipal Code is amended as follows with the remaining language remaining the same:

5. Deciduous trees shall have a caliper of at least ~~[1.75]~~2 inches at the time of planting~~[-The caliper may be averaged, but no individual tree shall have a caliper of less than 1.5 inches];~~

6. Evergreen trees shall be at least six feet in height measured from treetop to the ~~[ground]~~ root flare at the time of planting;

**Section Twenty-two.** Section 19.25.080, entitled **Landscaping – General Requirements**, subsection 8, of the Burien Municipal Code is amended as follows with the remaining language remaining the same:

8. Unless recommended by a ~~[Certified Arborist]~~ qualified tree professional, no tree defined as a prohibited tree in BMC 19.10.408 shall be planted.

**Section Twenty-three.** Section 19.25.080, entitled **Landscaping – General Requirements**, subsection 15 and 16, of the Burien Municipal Code is amended as follows with the remaining language remaining the same:

15. ~~[Existing s]~~Soils shall be augmented as follows:

A. For sites subject to drainage review in accordance with BMC Title 13, soil amendments shall follow the standards for restoring the soil moisture holding capacity of BMC Title 13; ~~[, or]~~

B. For sites not subject to drainage review in accordance with BMC Title 13, amend existing soils with a two-inch layer of fully composted organic material rototilled or incorporated a minimum of six inches deep except in the following circumstances:

i. Rototilling and machinery are prohibited within the Tree Protection Zone to prevent damage to tree roots and soil amendments shall only be required in disturbed soils. When incorporating soil amendments within the Tree Protection Zone only hand tools or pneumatic (air) excavation shall be used;

ii. New planting areas and those requiring new planting soil shall use a mix of 50 percent topsoil, 40 percent coarse sand, and 10 percent compost by volume, unless an alternative is approved by the Director.

16. Landscape areas shall be covered with mulch or arborist woodchips to minimize evaporation as follows:

A. For sites subject to drainage review in accordance with BMC Title 13, mulching shall follow the standards for restoring the soil moisture holding capacity of BMC Title 13, or

B. For sites not subject to drainage review in accordance with BMC Title 13, a minimum two-inch layer of mulch shall consist of materials such as yard waste, coarse woody debris, sawdust and/or manure that is fully composted;

**Section Twenty-four.** Section 19.25.080, entitled **Landscaping – General Requirements**, subsection 18 is amended and subsections, 19 through 21, of the Burien Municipal Code are created as follows:

18. When underplanting existing trees, the smallest plant available shall be used to limit root disturbance. For example, plant a 1 gallon or 4-inch plant rather than a 5-gallon plant;

19. New landscaping shall not incorporate any plants identified on the prohibited plants and trees list, or weeds listed by King County as ‘non-regulated’ and ‘weeds of concern’. Existing noxious weeds identified as Class A, B or C shall be identified on the landscape plan and shall be removed. The weeds and trees are prohibited in new land development landscape plans or as required replacement trees on private property;

20. The prohibited weeds and trees listed by King County as ‘non-regulated’ and ‘weeds of concern’ on the prohibited plants and trees list are recommended for removal from private property. Hedges made of laurel, holly, or other noxious species must be removed pursuant to BMC 19.25.080(19) if located on a lot adjacent to a Burien park;

~~1821.~~ Permanent cast in place concrete curbs or structural barriers shall be provided to protect landscape areas from damage by vehicles.

**Section Twenty-five.** Section 19.25.090, entitled **Landscaping – Alternative options**, subsection 1.A, of the Burien Municipal Code is amended as follows with the remaining language remaining the same:

- A. A development [~~retains an additional 10 percent of significant trees or an additional 10 significant trees per acre on site (above the requirements of BMC 19.25.120(3) and (4)), whichever is greater~~] meets their entire required tree credits with existing significant or exceptional trees on the site; or

**Section Twenty-six.** Section 19.25.100, entitled **Landscaping – Irrigation**, subsection 2.C and 2.D, of the Burien Municipal Code is amended as follows with the remaining language remaining the same:

- C. Landscape areas consisting of drought-tolerant vegetation~~[-];~~ and

- D. Areas of disturbed existing vegetation that require supplemental irrigation to mitigate impacts from construction activities.

**Section Twenty-seven.** Section 19.25.120, entitled **Significant trees – Retention required**, of the Burien Municipal Code is repealed in its entirety:

**Section Twenty-eight.** Section 19.25.130, entitled **Significant trees – Retention plan**, of the Burien Municipal Code is repealed in its entirety:

**Section Twenty-nine.** Section 19.25.140, entitled **Significant trees – Incentives for retention**, of the Burien Municipal Code is repealed in its entirety:

**Section Thirty.** Section 19.25.150, entitled **Significant trees – Protection**, of the Burien Municipal Code is repealed in its entirety:

**Section Thirty-one.** Section 19.25.160, entitled **Significant trees – Replacement**, of the Burien Municipal Code is repealed in its entirety:

**Section Thirty-two.** Section 19.25.170, entitled **Maintenance**, of the Burien Municipal Code is renumbered **19.25.120** and amended as follows with the remaining language remaining the same:

1. All landscaping [~~and significant trees~~] shall be maintained for the life of the project.
2. All landscape materials [~~and significant trees~~] shall be pruned and trimmed as necessary to maintain a healthy growing condition or to prevent primary limb failure;
3. With the exception of dead, diseased or damaged trees specifically retained to provide wildlife habitat, other dead, diseased, damaged or stolen plantings shall be replaced per Table 19.26.100-1 within three months or during the next planting season if the loss does not occur in a planting season;
4. Landscape areas shall be kept free of trash.

**Section Thirty-three.** Section 19.25.180, entitled **Bonds/Security**, of the Burien Municipal Code is renumbered **19.25.130** and amended as follows with the remaining language remaining the same:

Performance bonds or other appropriate security (including letters of credit and set-aside letters) shall be required for a period of [~~two~~]three years after the planting or transplanting of vegetation to insure proper installation, establishment and maintenance.

**Section Thirty-four.** Chapter 19.26, entitled **Tree Retention**, of the Burien Municipal Code is created as follows:

## **Chapter 19.26 Tree Retention**

**19.26.010 User Guide**

**19.26.020 Purpose.**

**19.26.030 Applicability.**

**19.26.040 Exceptional trees.**

**19.26.050 Significant and exceptional trees – Minimum tree credits.**

**19.26.060 Tree removal – not associated with development.**

**19.26.070 Tree removal – associated with development activity.**

**19.26.080 Retention plan – associated with development activity.**

**19.26.090 Tree Protection – associated with development activity.**

**19.26.100 Significant and exceptional trees – Replacement**

**19.26.110 Maintenance.**

**19.26.120 Bonds/security.**

**19.26.130 Inspection**

**19.26.140 Inspection – Procedures**

**19.26.150 Stop work orders**

**19.26.160 Enforcement and penalties**

**19.26.010 User Guide.**

This section is intended to provide an overview of the tree regulations contained in this chapter.

1. Generally, these regulations apply to private property outside of critical areas, associated buffers, and shoreline management areas.

2. Tree removal not associated with development. If the tree is being removed for reasons other than development (for example, if the tree is being removed so a property owner can install solar panels), then a minor tree removal permit (see 19.26.060) is required in the following situations:

A. For tree removal in excess of the allowed limit of significant tree removal per year(s), see table 19.26.060-1;

B. For any exceptional tree removal;

C. Or for removal of trees that would result in a lot going below the required minimum tree credits.

3. Tree removal associated with development. If the tree is being removed as part of a development (for example, to allow for the construction of a new home), a major tree removal permit is required, and:

A. All applications shall be accompanied by a tree protection plan pursuant to BMC 19.26.090 if there is development activity proposed within the critical root zones of significant or exceptional trees proposed for retention.

B. All applications shall be accompanied by a tree replacement plan pursuant to BMC 19.26.100 if the required minimum tree credits are not met by existing significant and exceptional trees.

4. Tree removal on an undeveloped lot. All significant and exceptional trees on an undeveloped lot shall be retained. Tree removal or land clearing on an undeveloped lot for the purpose of future development is prohibited unless a land use permit is approved by Burien.

**19.26.020 Purpose.**

The purpose of this chapter is to provide minimum standards for tree retention to foster a healthy and attractive community; to increase canopy cover in an equitable manner across the city; to maintain a positive community image; to improve the aesthetic quality of the built environment; to enhance quality of life; to protect and enhance property values; to promote retention and protection of existing vegetation; to reduce the impacts of development on drainage systems and natural habitats; to absorb wind and noise; to enhance air quality; to conserve valuable water resources; and to increase privacy for and within residential zones by:

1. Retaining existing vegetation significant and exceptional trees by incorporating them into the site design;
2. Promoting water-efficient landscaping through the use of appropriate native or climate-adapted trees, which, once established, typically require less water;
3. Promoting land development practices that result in minimal adverse disturbance to existing vegetation and soils within Burien while at the same time recognizing that certain factors may require the removal of certain trees;
4. Protecting trees during construction activities from damage to tree roots, trunks, and branches;
5. Preventing the introduction of noxious tree species in landscaping that may damage surrounding habitats over time;
6. Absorbing greenhouse gases, mitigating climate change, and removing air pollution;
7. Providing wildlife habitat;
8. Maintaining and increasing tree canopy within Burien;
9. Reducing Burien's gray infrastructure costs for stormwater management;
10. Mitigating the impacts of the urban heat island effect; and
11. Providing increased areas of permeable surfaces to allow for:

A. Infiltration of surface water into ground water resources;

B. Reduction in the quantity of storm water discharge; and

C. Improvement in the quality of storm water discharge.

**19.26.030 Applicability, exemptions, permitting, and review authority.**

1. A minor or major tree removal permit is required for all tree removals except those exempted by this chapter, or those allowed under 19.26.060(3).

2. The following activities and uses are exempt from this Chapter:

A. Burien-owned lands, including parks and Burien-owned rights-of way, which are regulated by BMC 12.38;

B. Removal of trees below 6 inches diameter at standard height;

C. Removal of trees by Burien, emergency responders, or public and private utilities in situations involving danger to life or property, substantial fire hazards, or interruption of utility services;

D. Trees located in critical areas or associated buffers, which are regulated by BMC 19.40, except that properties containing critical areas may be subject to a Forest Management Plan per BMC 19.26.060(7) in addition to the requirements of BMC 19.40;

E. Trees located in shoreline management areas, regulated by BMC 20.30.040, except that properties containing shoreline management areas may be subject to a Forest Management Plan per BMC 19.26.060(7) in addition to the requirements of BMC 20.30.040; and

F. Removal of trees by the Port of Seattle, the Port of Seattle's agents or contractors, or private landowners at the Port of Seattle's request or direction to prevent the creation of obstructions to airplane navigation or airport hazards, to remove such obstructions or airport hazards as may come to exist, or for the safe and efficient operation of Seattle-Tacoma International Airport, provided that:

i. Trees are replaced at the ratios in Table 19.26.100-1;

ii. Tree replacement follows planting standards in BMC 19.26.100; and

iii. Replacement trees are suitable tree species for the site and trees planted within areas subject to airport height limits for the Seattle-Tacoma International Airport (BMC 19.17.140) shall be small enough upon maturity to provide sufficient clearance.

3. Emergency tree work. If a minor or major tree removal permit cannot be obtained prior to emergency tree work, a retroactive permit shall be submitted within 14 days following tree removal, unless the tree removal is exempt pursuant to 19.26.030(2) or BMC 19.26.060(3), in the following situations:

A. Removal of trees by the property owner in emergency situations involving an imminent likelihood of failure and high likelihood of impacting the target and significant to severe consequences using the ISA Basic Tree Risk Assessment process, substantial fire hazards, or interruption of utility services. It is the responsibility of the property owner or tenant to have a qualified tree professional document the reason for the emergency removal with a qualified tree risk assessment report; or

B. Removal of dead trees that are overhanging a constant and immovable target, such as a house, that could result in significant to severe consequences using the ISA Basic Tree Risk Assessment process. It is the responsibility of the property owner or tenant to document the reason for the emergency removal. Documentation may include photos that clearly show the hazard or a qualified tree risk assessment report from a qualified tree professional that documents the conditions.

4. The Director may adopt preservation and protection guidelines to further the purposes of this Chapter. The guidelines may include:

A. Phasing of tree removal and replanting;

B. Any other tree preservation, protection, replacement, and planting standards and procedures the Director deems necessary.

5. If appropriate professional expertise does not exist within Burien, the Director may require independent review of any land use application that involves tree removal and land clearing at Burien's discretion by an independent qualified tree professional. This review shall be paid for by the applicant, and the City shall select the third-party review professional.

#### **19.26.040 Exceptional trees.**

1. An exceptional tree is any tree 30 inches or greater diameter at standard height, any tree identified in Table 19.26.040-1, or any tree designated as a Heritage Tree.

2. Removal of exceptional trees is regulated on all lots. Removal shall not occur before issuance of a minor tree removal permit or major tree removal permit.

A. Undeveloped lot. On an undeveloped lot, exceptional trees shall not be removed unless:

i. The tree(s) is determined to meet the criteria of a hazard tree per BMC 19.10.238;

ii. The tree(s) poses a risk pursuant to BMC 19.26.030(3) to surrounding targets based on a qualified tree risk assessment report produced by a qualified tree professional.

B. Developed lot. On a developed lot that is not undergoing development, exceptional trees shall not be removed unless:

i. The tree(s) is determined to meet the criteria of a hazard tree per BMC 19.10.238;

ii. The tree(s) pose a risk pursuant to BMC 19.26.030(3) to surrounding targets based on a qualified tree risk assessment report produced by a qualified tree professional; or

ii. The tree(s) meets the maintenance criteria in 19.26.110(8) and the condition is documented by a qualified tree professional with a qualified tree risk assessment report.

C. Lot undergoing development.

i. On a proposed development site, exceptional trees shall not be removed unless they are determined to meet the criteria of a hazard tree per BMC 19.10.238 by a qualified tree professional; or

ii. Exceptional trees may be removed if retention will limit the constructable building coverage to less than eighty-five (85) percent of the maximum building coverage area allowed pursuant to BMC 19.15; and

iii. The following departures may be granted to prevent removal or potential damage to an exceptional tree. If such a departure is granted, the departure shall be no greater than the development potential lost in tree protection zones. Code departures shall be reviewed and approved by the City of Burien in conjunction with a Land Use Permit or Construction Permit.

a. For a single-family residence, building coverage may be increased by twenty (20) percent or a reduction of the front setback by up to ten (10) feet may be granted.

b. For all other uses, an additional ten (10) feet of height may be granted.

c. Parking reduction. A reduction in the parking quantity required by BMC 19.15 and BMC 19.20.040 may be permitted in order to protect an exceptional tree if the reduction complies with BMC 19.20.040(3) and would result in a project that avoids the tree protection zone.

d. If a departure is provided pursuant to (a), (b), or (c) above, the tree shall be protected for the life of the project pursuant to BMC 19.26.110, and a covenant running with the land shall be recorded, ensuring the protection of the exceptional tree.

e. If a departure is provided pursuant to (a), (b), or (c) above, a maintenance bond shall be applied by the director, for the appraised landscape value, using the latest edition of the “Guide for Plant Appraisal”. The bond of the tree shall be posted for a three-year survival period after the conclusion of development. The bond must be posted before the certificate of occupancy is issued.

**Table 19.26.040-1 Exceptional Tree Table with Threshold Diameters at Standard Height<sup>1</sup>**

<b><u>Exceptional Tree Sizes</u></b>		
<b><u>Common name</u></b>	<b><u>Scientific name</u></b>	<b><u>Exceptional size</u></b>
<u>Grand fir</u>	<u><i>Abies grandis</i></u>	<u>24 in</u>
<u>Vine maple</u>	<u><i>Acer circinatum</i></u>	<u>10 in</u>
<u>Bigleaf maple</u>	<u><i>Acer macrophyllum</i></u>	<u>24 in</u>
<u>Red alder</u>	<u><i>Alnus rubra</i></u>	<u>Not Exceptional<sup>2</sup></u>

<u>Pacific madrone</u>	<u><i>Arbutus menziesii</i></u>	<u>8 in</u>
<u>Port Orford cedar</u>	<u><i>Chamaecyparis lawsoniana</i></u>	<u>24 in</u>
<u>Cascara</u>	<u><i>Frangula purshiana</i></u>	<u>8 in</u>
<u>Ash</u>	<u><i>Fraxinus spp.</i></u>	<u>Not Exceptional<sup>3</sup></u>
<u>Sitka spruce</u>	<u><i>Picea sitchensis</i></u>	<u>24 in</u>
<u>Lodgepole or shore pine</u>	<u><i>Pinus contorta</i></u>	<u>12 in</u>
<u>Western white pine</u>	<u><i>Pinus monticola</i></u>	<u>24 in</u>
<u>Black cottonwood</u>	<u><i>Populus trichocarpa</i></u>	<u>Not Exceptional<sup>2</sup></u>
<u>Bitter cherry</u>	<u><i>Prunus emarginata</i> var. <i>mollis</i></u>	<u>Not Exceptional<sup>2</sup></u>
<u>Douglas-fir</u>	<u><i>Pseudotsuga menziesii</i></u>	<u>24 in</u>
<u>Oregon white oak</u>	<u><i>Quercus garryana</i></u>	<u>12 in</u>
<u>Willow (All native species) –</u>	<u><i>Salix spp. (Geyeriana ver meleina, eriocephala ssp. mackenzieana, Hookeriana, Piperi, Scouleriana, sitchensis)</i></u>	<u>8 in</u>
<u>Pacific yew</u>	<u><i>Taxus brevifolia</i></u>	<u>8 in</u>
<u>Western redcedar</u>	<u><i>Thuja plicata</i></u>	<u>24 in</u>
<u>Western hemlock</u>	<u><i>Tsuga heterophylla</i></u>	<u>24 in</u>
<u>Any tree not listed in this table</u>		<u>30 in or greater</u>
<u>Heritage tree</u>		<u>Any size</u>

<sup>1</sup>Diameter at standard heights listed in this table apply for both for single stem or multistem equivalent.

<sup>2</sup>These trees are early successional trees, which have a short lifespan and are not always appropriate to retain around urban areas with high concentrations of targets (e.g., homes, buildings, and people).

<sup>3</sup>This is a genus of tree species that is susceptible to emerald ash borer, the additional protection afforded by the exceptional designation is not warranted as these trees have a higher likelihood of mortality.

### **19.26.050 Minimum tree credits.**

1. A minimum tree credit density shall be maintained on each lot as specified in the table below regardless of development status. The tree credits may consist of existing significant or exceptional trees, replacement trees, or a combination. Only healthy trees can be used to satisfy the required minimum tree credits. If the number of trees required includes a fraction of a tree, any amount equal to or greater than one-half (1/2) shall be rounded up.

Table 19.26.050-1 Required Minimum Tree Credits

<u>Land Use Type</u>	<u>Required Minimum Tree credits per 1,000 square feet of developable area</u>
<u>Single-family development (detached dwellings, ADUs and DADUs) and townhouses on individual lots.</u>	<u>1</u>
<u>Multi-family development (attached dwellings including townhouse apartments and cottage housing).</u>	<u>1</u>

A. Calculating Tree Credits: Tree retention standards shall be applied to the developable area of a property. Developable area excludes critical areas and their buffers, public rights-of-way, private PUD streets, shared driveways, and public trails. Here are examples: If a single-family lot has a developable area of 6,600 square feet, the minimum required tree credits would be seven (7) ( $6,600/1,000 = 6.6$  rounded up to 7); this could be obtained by retaining one (1) tree worth seven (7) credits or seven (7) trees each worth one (1) credit. If a single-family lot has a developable area of 5,400 square feet, the minimum required tree credits would be five (5) ( $5,400/1,000 = 5.4$  rounded down to 5); this could be obtained by retaining one (1) tree worth five (5) credits or five (5) trees worth one (1) credit.

B. For sites with existing healthy significant or exceptional trees, a minimum percentage of tree credits shall be from retained trees; the remainder may be from retained trees or newly planted trees. In order to ensure that existing trees are appropriately retained as new development activities occur, fifty (50) percent of required tree credits must be achieved through retention of existing trees, except in the following circumstances:

i. Lots 3,000 square feet or less are exempt from meeting required minimum tree credits with existing trees, except pursuant to exceptional tree requirements in section 19.26.040. These lots can meet the minimum required tree credits either through tree replacement or fee-in-lieu per BMC 19.26.100(5);

ii. If retention will limit the constructable building coverage to less than eighty-five (85) percent of the maximum building coverage area allowed pursuant to BMC 19.15;

iii. If the lot does not have sufficient significant or exceptional trees to meet the tree retention requirements, then any existing healthy trees shall be retained, provided the lot does not meet the criteria in (i) or (ii) above.

C. Any trees planted to meet the landscaping requirements of BMC 19.25 shall count towards the required minimum tree credits provided they meet the planting standards in BMC 19.26.100.

D. Tree credits shall be assessed in the following priority:

i. First, existing healthy trees.

ii. Second, replacement trees.

iii. Last, fee-in-lieu per BMC 19.26.100(5), where each fee-in-lieu will count as one (1) credit.

2. Any lot that in its current condition does not meet the required minimum tree credits shall be brought into conformance when the following thresholds are met:

A. Construction of a new structure that is 500 square feet or larger; or

B. Construction of an addition to an existing structure where the addition is 500 square feet or larger.

3. The following process shall be used for calculating the required minimum tree credits for a lot or lots that are being subdivided for the purpose of determining tree retention and replacement. The required minimum tree credits shall be applied to the developable area of the short plat or subdivision (developable area excludes critical areas and their buffers, public rights-of-way, private PUD streets, shared driveways, and public trails). Additionally, each individual lot requires a minimum of two (2) tree credits per lot.

As an example, if a lot had 20,000 square feet of developable area, it would require twenty (20) tree credits for the entire property (20,000/1,000 = 20). If the parcel was divided into four (4) lots, each of the lots would require a minimum of two (2) tree credits, or a total of eight (8) tree credits (4 lots X 2 credits per lot = 8 tree credits). The remaining twelve (12) tree credits (20 credits - 8 credits = 12) can be on any combination of lots or open space.

4. Trees located within a critical area or associated buffer may not count towards that lots' required minimum tree credits.

5. Trees growing on a property line shall count as half (1/2) the tree credits listed in Table 19.26.050-2.

6. Non-significant healthy trees between 1 and 6 inches diameter at standard height may count as 0.75 credit per retained tree in lieu of replacement trees.

**Table 19.26.050-2 Tree credits**

<u>Existing Significant and Exceptional Trees</u>							<u>Planted trees</u>		
<u>Tree DSH<sup>1</sup> Or size</u>	<u>6 to 10 inches DSH</u>	<u>Larger than 10 and up to 14 inches DSH</u>	<u>Larger than 14 and up to 18 inches DSH</u>	<u>Larger than 18 and up to 22 inches DSH</u>	<u>Larger than 22 and up to 26 inches DSH</u>	<u>Larger than 26 and less than 30 inches DSH</u>	<u>30 inches or greater DSH and all exceptional trees</u>	<u>2-inch caliper deciduous or broadleaf tree</u>	<u>6-foot-tall evergreen conifer</u>
<u>Credits per tree</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>7</u>	<u>9</u>	<u>1</u>	<u>2</u>

<sup>1</sup> Diameter at standard height (DSH), which means the diameter of a tree trunk measured at 4.5 feet above average grade, is used in determining the diameter of existing trees. Where a tree has a branch(es) or swelling that interferes with the measurement at 4.5 feet above average grade or where a tree tapers below this point, the diameter is measured at the narrowest point below 4.5 feet. For trees located on a slope, the 4.5 feet is measured from the average of the highest and lowest ground points or, on very steep slopes where this is not possible, the lowest practical point on the uphill side. Where a tree splits into several trunks close to ground level, the DSH for the tree is the square root of the sum of the DSH for each individual stem squared (example with 3 stems: DSH = square root [(stem1)^2 + (stem2)^2 + (stem3)^2]).

**19.26.060 Tree removal – not associated with development.**

The following regulations shall apply to significant and exceptional tree removal not associated with development activity:

1. Minor tree removal permit. All proposals not subject to subsections 3 or 7 of this section, or BMC 19.26.070 shall be required to obtain a minor tree removal permit. Minor tree removal permits shall be reviewed administratively. Burien shall only approve a permit in the following scenarios:

A. Without tree replacement, provided the lot meets the minimum tree credits in Table 19.26.050-1:

- i. The significant or exceptional trees are determined to meet the criteria of a hazard tree per BMC 19.10.238;
- ii. The significant or exceptional tree poses a risk pursuant to BMC 19.26.030(3);

iii. The significant or exceptional tree meets the maintenance criteria in 19.26.110(8);

iv. The significant tree is on the prohibited plants and trees list and is not exceptional; or

v. The significant or exceptional tree is dead or likely to die within 1 year.

B. With tree replacement:

i. The lot meets the required minimum tree credits but removes significant trees beyond the allowances in Table 19.26.060-1. Each significant tree removed beyond the allowances must be replaced at a one (1) to one (1) ratio.

ii. Tree removal pursuant to BMC 19.26.060(1)(A) results in a lot below the required minimum tree credits.

2. Minor tree removal permit applications shall be submitted with a complete application form as prescribed by the Director and with all required fees. All applications for minor tree removal permits shall include the following:

A. A written statement of the reason for the removal;

B. A basic site plan or aerial photo showing the approximate location of significant and exceptional trees on the site, including their size (DSH), species, condition, and clearly designating which tree(s) will be removed and which tree(s) will be retained. The site plan shall also show all structures, driveways, and other impervious surfaces on the site;

C. A statement that tree(s) proposed for removal are not in shoreline management areas, critical areas or associated buffers, and an acknowledgment that tree removal will not result in a lot below the required minimum tree credits in BMC 19.26.050;

D. For required replacement trees, a planting plan must show location, size, species, and quantity of new trees in accordance with standards set forth in this Chapter;

E. Burien may request additional information as needed to allow adequate review of the proposal;

F. The Director shall approve, approve with terms, conditions, or specifications, or deny the minor tree removal permit application within 60 calendar days;

G. Minor tree removal permits expire 90 days from issuance.

3. Existing residential, commercial, and other developed lots – significant tree removal. Any residential commercial, or other developed lot owner may remove the allotted number of trees in Table 19.26.060-1 without a minor tree removal permit, provided that the following criteria are met:

A. The tree is not in a shoreline management area, critical area or associated buffer;

B. The tree is not subject to the retention and maintenance requirements in place for three years following approval of new development per BMC 19.26.110(1); and

C. The tree removal would not result in the lot below the required minimum tree credits per BMC 19.26.050. If allowance for removal of a significant tree(s) results in a lot below the required minimum tree credits, replacement tree(s) shall be required in order to reach the required minimum tree credits.

**Table 19.26.060-1 Significant Tree Removal Allowances, No Permit Required<sup>1</sup>**

<u>Property Size</u>	<u>Maximum allowance for significant tree removals per 12 months</u>
<u>Under 5,000 square feet</u>	<u>1</u>
<u>5,000 to 10,000 square feet</u>	<u>2</u>
<u>10,001 to 20,000 square feet</u>	<u>4</u>
<u>20,001 square feet or greater</u>	<u>5</u>

<sup>1</sup>If the property is below the required minimum tree credits trees cannot be removed without a minor tree removal permit.

4. Trees removed pursuant to 19.26.060(1)(A) do not count towards the significant tree removal allowances. However, if tree removal would result in a lot below the required minimum tree credits, a minor tree removal permit prepared by a qualified tree professional describing how the tree(s) meet the criteria in 19.26.060(1)(A) is required. Tree replacement for such trees shall

be sufficient to reach the required minimum tree credits. The City retains the right to dispute the emergency and require that replacement trees/vegetation be replanted as mitigation.

5. Trees planted to meet the required minimum tree credits required at the time of original development or required replacement trees for previous tree removal shall be subject to the following regulations:

A. Required replacement trees may not be removed during the three-year maintenance period pursuant to BMC 19.26.110(1). Following the maintenance period, all replacement trees shall be considered significant trees, even if below the size threshold.

B. Property owners shall be required to provide a minor tree removal permit for removal of previously required replacement trees, even if the tree is below the minimum size for significant trees. Such trees shall always require replacement planting of one tree for each tree removed.

6. Replacement trees are subject to the requirements in BMC 19.26.100.

7. Forest management plan. The purpose of a forest management plan is to manage a forested property over an extended period of time to avoid piecemeal actions that can lead to degradation of the forest. A forest management plan allows for tree removal, pruning, and overall vegetation management of a site. A forest management plan must be written by a qualified tree professional. The plan will identify current forest conditions and considerations for management over a time period of ten years. A parcel must be greater than 30,000 square feet in size and have a canopy cover of forty (40) percent or greater to be eligible for a forest management plan.

A. A forest management plan shall include the following:

i. A description of the purpose of the plan including the landowner's objectives and goals;

ii. A physical description of the site conditions including shoreline management areas, critical areas or buffers;

iii. A description of the forest health including pests, pathogens, and noxious species;

iv. A forest inventory including a map and list of all significant and exceptional trees proposed for management;

v. Photos of trees and understory composition;

vi. A wildlife habitat description;

vii. A description of existing structures and utilities;

viii. Forest management recommendations; and

ix. A signature of the qualified tree professional and property owner.

B. After the initial submittal and approval of the plan, a tree permit shall be submitted before any subsequent tree management actions to ensure compliance with the forest management plan. Subsequent permits do not require reports written by a qualified tree professional unless the requested actions are not in alignment with the approved forest management plan.

C. The Forest Management Plan is subject to the following:

i. Exceptional tree protection in BMC 19.26.040;

ii. Minimum tree credits in BMC 19.26.050; and

iii. Critical area regulations in BMC 19.40 and/or shoreline regulations in BMC 20.30.040.

**19.26.070 Tree removal – associated with development activity.**

Significant trees and exceptional trees shall be retained as follows:

1. Major tree removal permit. All proposals which are not exempt from the provisions of this chapter, require a land use or construction permit and remove significant or exceptional trees shall be required to obtain a major tree removal permit. The major tree removal permit application shall be submitted and reviewed in conjunction with the associated land use or construction permit.

A. Applications shall be submitted with a complete application form as prescribed by the Director and with all required fees.

i. All applications shall be accompanied by a tree retention plan pursuant to BMC 19.26.080 if there is development activity proposed within the critical root zones of significant or exceptional trees proposed for retention.

ii. All applications shall be accompanied by a replacement plan pursuant to BMC 19.26.100 if the required minimum tree credits are not met by existing significant and exceptional trees and the lot is required to be brought into conformance pursuant to BMC 19.26.050.

B. Major tree removal permits expire 180 (one hundred and eighty) days from the date of issuance or the expiration date of the associated land use or construction permit.

2. All significant and exceptional trees on an undeveloped lot shall be retained. Tree removal or land clearing on an undeveloped lot for the purpose of future development is prohibited unless a land use permit is approved by Burien.

3. Tree removal on all lots is subject to the minimum required tree credits in BMC 19.26.050; however, on lots less than 3000 square feet, all significant trees located within the buildable areas of the lot (outside of setbacks) may be removed if needed to accommodate a proposed structure, except for exceptional trees which shall only be removed in accordance with BMC 19.26.040(2)(C).

4. If significant or exceptional trees were previously located in a closed, forested situation, a qualified tree professional shall provide a written analysis of the stability of the trees and assess the windthrow potential within a three-year time period.

**19.26.080 Retention plan – associated with development activity.**

The applicant shall submit a tree retention plan prepared by a qualified tree professional, concurrent with a land use review application, grading permit application, building permit application, or preliminary subdivision application or short subdivision application, whichever is reviewed and approved first. The Director shall compile and maintain a database of significant and exceptional trees based upon the submitted and approved tree retention plans. The tree retention plan shall consist of:

1. A tree map that identifies the location, size (DSH), and species of all significant and exceptional trees on a site. The tree map shall also show:

A. The location and species of each significant and exceptional tree:

- i. With an engineered professional survey location when a survey is required; or
- ii. With an accuracy of five (5) feet or less – or measurements from the property line and to the proposed disturbance – when a survey is not required for the application.

B. All trees proposed for removal shall clearly be marked with an X;

C. The location of any tree designated as an exceptional tree. Exceptional trees must be clearly noted on the survey with a unique symbol;

D. The location of trees within thirty (30) feet of any clearing or grading that could be impacted by development;

E. Trees shall be labeled on all plan sheets with numbers that correspond to physical tags on the trees; and

F. The location of the critical root zone(s) and tree protection zone(s), showing the tree protection fencing at the extent of the tree protection zone. Tree protection fencing shall be on all plans that involve ground disturbance, such as but not limited to grading, demolition, landscaping, and stormwater.

2. A report prepared by a qualified tree professional documenting the current health and structural condition of all significant and exceptional trees on and overhanging the site. This must include:

A. A description of the existing site conditions, including understory plants;

B. Feasibility of retaining significant and exceptional trees on and overhanging the site based on existing conditions and proposed development and site improvements, including but not limited to new structures, additions to existing structures, appurtenances, accessory structures, utilities and driveways;

C. Description of tree protection measures pursuant to BMC 19.26.090 and any special measures required to protect the trees throughout construction, including but not limited to alternative excavation methods within the tree protection zone, irrigation, mulch, arborist monitoring, etc.

**19.26.090 Tree protection – associated with development activity.**

To provide the best protection for significant and exceptional trees on and adjacent to the lot:

1. No clearing or development activity shall be allowed on a site until approval of tree retention and landscape plans;
2. An area of prohibited disturbance, corresponding to the TPZ of the significant and/or exceptional tree(s) shall be protected during construction with a temporary six (6) foot-high chain-link fence and include warning signs “Tree Protection Zone – Keep Out” every twenty (20) feet. The fencing shall be installed prior to issuance of development permits for the site and removed once the project is complete. Fencing shall be inspected by the Director prior to grading;
3. Each retained exceptional tree shall be posted with the fine associated with removal as provided in Table 19.26.160-1. The fine must be affixed to the nearest fence panel or directly to the tree in a manner that does not damage the tree. Signs must be visible and maintained throughout the duration of the project;
4. No impervious surfaces, fill, excavation, or storage of construction materials or equipment shall be permitted within the area defined by such fencing. Under no circumstances can impacts occur within the interior critical root zone. Grading impacts can be up to twenty-five (25) percent of the total critical root zone provided a qualified tree professional determines that disturbances within the critical root zone will not impact the health and structure of the tree. A qualified tree professional shall provide sufficient mitigation measures for any disturbances within the critical root zone and temporary access within the tree protection zone must be approved and monitored by a qualified tree professional at the expense of the applicant. Other limited disturbances may be considered at the discretion of the director;
5. Each tree protection zone must be covered with four (4) inches of coarse arborist woodchips to clearly delineate the tree protection zone, retain moisture, and protect soils throughout construction. Supplemental irrigation shall be required if the woodchip layer cannot sufficiently maintain soil moisture throughout construction;
6. The grade level shall not be lowered or raised within the tree protection zone without a report provided by a qualified tree professional and approval of the director. Approved excavation within the tree protection zone must use low-impact excavation methods, such as directional boring, pneumatic (air) or hydro excavation, or hand digging to minimize disturbance

to the trees. Any roots two (2) inches diameter or greater that cannot be retained must be cleanly cut at the extent of excavation to prevent damage to the root beyond excavation. Exposed roots must be covered with burlap or plastic sheeting and kept wet throughout construction;

7. Alternative protection methods may be used if determined by the Director to provide equal or greater tree protection.

#### **19.26.100 Tree replacement.**

If the required minimum tree credits pursuant to BMC 19.26.050 is not met with existing trees, or removal is in excess of BMC 19.26.060 the required number of trees shall be replaced.

1. The applicant shall submit a replacement plan prepared by or with a qualified tree professional that shall demonstrate that tree installation will meet the minimum standards of this section. A tree replacement plan can be part of the landscape plan or a separate plan.

2. Replacement trees shall be planted on the site from which significant or exceptional trees are removed. Unless the Director accepts one or more of the alternatives set forth in BMC 19.26.100(5) on-site replacement shall, at the minimum, meet the required minimum tree credits of Table 19.26.050-1. Tree replacement exceeding the required minimum tree credits is encouraged.

3. Any tree removed not associated with development in excess of the allowance for significant tree removal shall be replaced in accordance with BMC 19.26.060 and follow standards in this section.

4. Any exceptional healthy tree required to be removed as part of a development permit requires replacement at a ratio of three (3) trees for each tree removed and shall follow size and planting standards in this section. This replacement is in addition to the minimum required tree credits in BMC 19.26.050-1.

5. When complete on-site replacement cannot be achieved or is considered not practical, the Director may approve a fee-in-lieu for each replacement tree required by BMC 19.26 but not planted on site.

A. The Burien City Council by resolution shall establish a fee-in-lieu amount for replacement trees. The fee-in-lieu amount shall cover the cost of a tree, installation

(labor and equipment), maintenance for two years, and fund administration. The fee-in-lieu shall be adjusted by the Consumer Price Index (CPI) for the Seattle-Tacoma area annually.

B. The applicant shall pay the fee-in-lieu amounts to the City upon completion of a site inspection and confirmation that lots above 3000 square feet meet the minimum required tree credits from retained and replaced trees.

C. Fee-in-lieu monies may be used for the City's urban forestry initiatives to achieve the objectives of the Green Burien Partnership Urban Forest Stewardship Plan and Climate Action Plan including but not limited to forestry education, restoration activities, the purchase of land for the purpose of reforestation or preservation, the planting of individual trees, funding a tree give-away program, purchase and installation of infrastructure to preserve existing trees and protect new trees, funding a City tree inventory, and/or for enforcement of this Chapter. Fee-in lieu monies may also be used for off-site replacement plantings at city-owned parks, public rights-of-way, Highline School District properties within the city limits, and neighborhoods identified in the Green Burien Partnership Urban Forest Stewardship Plan in need of tree equity as determined by the Director. All trees to be replaced offsite shall meet the replacement standards of this section.

D. Where appropriate, the Director may consider other measures designed to mitigate the loss of trees by restoring all or parts of the landscape and its associated benefits.

6. Replacement trees shall:

A. Be planted to reestablish or enhance protected trees or tree stands where they previously existed;

B. Be planted within sensitive areas or buffers when recommended in an approved critical areas report or otherwise meeting the requirements of BMC Section 19.40;

C. Be planted in locations appropriate to the species' growth habit and horticultural requirements;

D. Be located away from areas where infrastructure damage is likely to occur, including utility easements;

E. Be located to provide screening of the development from adjacent properties, where appropriate;

F. Be planted in areas that connect or are adjacent to sensitive areas or other open spaces, where appropriate;

G. Be integrated into the landscape plans, if required under BMC 19.25.040, for development; and

H. Be selected with consideration of the trees' maturation and maintenance requirements, especially for those to be planted next to or under overhead utility power lines.

7. Minimum sizes and requirements for replacement trees shall be as follows:

A. Deciduous or broadleaf trees – two (2) inch caliper at the time of planting;

B. Evergreen conifers – six (6) feet in height measured from treetop to the root flare at the time of planting;

C. Replacement trees shall adhere to all size requirements and standards in the latest version of The American Standard for Nursery Stock (ANSI Z60.1), and must be consistent with the approved tree plan;

D. Replacement trees shall be planted with the following requirements, unless they are planted within the tree protection zone of retained trees, in which case the Director may approve alternative specifications:

i. Soil shall be loosened within the planting hole three (3) times the widest dimension of the root ball;

ii. The top of the root ball shall be placed at finished grade and a four (4) inch-high soil or berm shall be constructed around the edge of the root ball;

iii. The root ball shall be placed on existing or recompact soil to prevent settling;

iv. Four (4) inches of woodchip or bark mulch shall be placed over the loosened soil, tapering so no woodchip or bark mulch touches the trunk of the tree;

v. Organic matter or fertilizer shall be incorporated with native soils as needed according to best management practices.

E. Trees shall be native or climate-adapted;

F. The location and type of on-site replacement trees shall be determined by a qualified tree professional using "Right tree, Right place" principles, OR site conditions must be modified to create the right place for the right tree;

G. Where the site allows, large and medium statured tree species shall be planted as replacement trees;

H. The Director may consider smaller-sized replacement trees if the applicant can demonstrate that smaller trees are more suited to the species, site conditions, and to the purposes of this section, and are planted in sufficient quantities to meet the intent of this section;

I. Replacement trees shall not consist of the prohibited trees as defined in BMC 19.10.408.

8. Installation of required replacement trees shall comply with the approved plan which shall be submitted with the development site plan.

9. All required tree replacement and other required mitigation shall be completed prior to issuance of the certificate of occupancy, and subject to Maintenance requirements in BMC 19.26.110.

10. A tree illegally removed pursuant to this chapter shall be replaced at the following ratio in Table 19.26.100-1.

**Table 19.26.100-1 Tree Replacement for illegal removal of trees**

<u>Diameter at standard height (DSH) of tree removed</u>	<u>Number or required replacement trees</u>
<u>6 to 10 inches DSH</u>	<u>1</u>
<u>Larger than 10 inches and up to 14 inches</u>	<u>2</u>
<u>Larger than 14 inches and up to 18 inches</u>	<u>3</u>
<u>Larger than 18 inches and up to 22 inches</u>	<u>4</u>

<u>Larger than 22 inches and up to 26 inches</u>	<u>5</u>
<u>Larger than 26 inches and up to 30 inches</u>	<u>6</u>
<u>Larger than 30 inches and Exceptional trees where an exception pursuant to BMC 19.26.040.2.C has not been granted</u>	<u>7</u>
<u>Exceptional trees granted an exception pursuant to BMC 19.26.040.2.C</u>	<u>8</u>

**19.26.110 Maintenance.**

1. Significant trees and exceptional trees shall be maintained for the life of the project and for a period of three years following issuance of the certificate of occupancy. A three (3) year tree maintenance agreement shall be recorded on the document approved by the Burien City Attorney.
2. All landscape materials, significant trees, and exceptional trees, shall be pruned and trimmed as necessary to maintain a stable structural condition or to prevent primary limb failure;
3. With the exception of wildlife snags specifically retained to provide wildlife habitat, other dead, diseased, damaged or stolen plantings shall be replaced per Table 19.26.100-1 within three months or during the next planting season if the loss does not occur in a planting season. Removal of a wildlife snag containing cavities or other obvious signs of state or federally protected bird, or animal habitation is considered to be tree removal and is subject to tree replacement and code enforcement provisions for illegal removal unless determined to pose a risk using the ISA Tree Risk Assessment process by a qualified tree professional.
4. Trees or portions of trees that obstruct or hinder the use of any public right-of-way or designated trail, particularly eight (8) feet or less above a pedestrian walkway or sidewalk and fourteen (14) feet or less above a paved public street, shall be removed. Portions of a tree shall be removed unless Burien determines that it is necessary to remove the entire tree.
5. Burien may remove trees or portions of trees which obstruct or hinder the use of the public right-of-way, city-owned property, or a designated trail without providing notice to the adjacent property owner; however, contact with the adjacent property owner shall be attempted as provided in 19.26.140 Inspection procedures.

6. Any tree that is topped, unless recommended by a qualified tree professional for the structural stability and longevity of a tree, is considered to be removed and requires a tree permit. Removal without a permit is subject to tree replacement and code enforcement provisions for illegal removal.

7. Any significant tree where more than twenty-five (25) percent of the live tree canopy is pruned, unless recommended by a qualified tree professional for the structural stability and longevity of a tree, is considered to be removed and requires a tree permit. Removal without a permit is subject to tree replacement and code enforcement provisions for illegal removal.

8. A tree(s) that is causing physical damage to private or public structure(s) may be permitted to be removed with a minor or major tree removal permit provided the problems associated with the tree cannot be corrected by reasonable practices, including but not limited to: pruning of the crown or roots of the tree, bracing, cabling, routine maintenance or cleaning of the structure, or construction modification. A report shall be prepared by a qualified tree professional documenting the damage and mitigation options.

#### **19.26.120 Bonds/security.**

Performance bonds or other appropriate security (including letters of credit and set-aside letters) shall be required for a period of three years after the planting or transplanting of vegetation to insure proper installation, establishment, and maintenance.

#### **19.26.130 Inspection.**

1. The Director shall have access to any site for which an active permit has been applied or issued to perform an on-site review and to ensure compliance with the terms of the permit. Inspections shall be completed prior to the removal of any trees. Upon completion of planting, a final tree inspection shall be completed to ensure proper installation. Upon completion of the three-year maintenance period, an inspection shall be completed to ensure the survival of planted and retained trees.

2. Upon completion of construction activities and prior to issuance of the certificate of occupancy all protected significant and exceptional trees shall be inspected by a qualified tree professional. Any tree found to be irreparably damaged, dying, or a high risk shall be replaced per 19.26.160(4) and subject to fines in Table 19.26.160-1 if it is determined the damage was likely caused by construction activities;

3. Whenever there is cause to believe that a violation of this Chapter has been or is being committed for which no active permit has been issued, the Director is authorized to inspect the site pursuant to BMC 19.26.220.

**19.26.140 Inspection - Procedures.**

Prior to making any inspections, the Director shall present identification credentials, state the reason for the inspection and request entry.

1. If the property or any building or structure on the property is unoccupied, the Director shall first make a reasonable effort to locate the owner or other individual(s) having charge or control of the property or portions of the property and request entry.

2. If, after reasonable effort, the Director is unable to locate the owner or other individual(s) having charge or control of the property and has reason to believe the condition of the trees creates an imminent hazard to individuals or property, or trees are being actively cut down without a permit, the Director or designee may enter the property.

**19.26.150 Stop work orders.**

The Director may issue a stop work order for failure to comply with any of the terms of a tree removal permit or any activity conducted in violation of this Chapter or in a dangerous or otherwise unsafe manner, as determined by the Director. The stop work order shall be in writing and served on the person(s) engaged in the activity or cause of the activity. The effect of such a stop work order shall be for the persons issued to immediately terminate all work or activity on the subject property until the Director authorizes such work or activity to proceed.

**19.26.160 Enforcement and penalties.**

Upon determination that there has been a violation of any provision of this Chapter, the City of Burien may pursue code enforcement and penalties in accordance with the provisions of Chapter 1.15 BMC Code Enforcement and this subsection. Where there is a conflict, this subsection shall prevail.

1. General Requirements. This section applies to all trees on private property. Enforcement shall be conducted in accordance with procedures set forth in this Chapter. Special enforcement provisions related to tree retention and restoration are set forth in this section.

2. Authority. It shall be the duty of the applicable department Director to administer the provisions of this section.

3. Civil Penalty Fines for Tree Removal.

A. It is unlawful to remove or damage trees in violation of the tree regulations in this Chapter. Tree removal shall include the removal of a tree, through either direct or indirect actions.

B. Any person who aids or abets in the violation shall be considered to have committed a violation for purposes of fines. This includes the arborist or company pruning or removing the tree.

C. Types of Violations. Violations of this Code include, but are not limited to, the following:

i. Removal or damage to tree(s), prior to final tree retention plan approval or issuance of a minor or major tree removal permit;

ii. Removal or damage to tree(s) that are shown, or would be shown, to be retained on an approved tree retention plan or any other violation of an approved tree retention plan; or

iv. Removal or damage to tree(s) in violation of the terms and conditions of an issued city permit, which will require compliance with American National Standards Institute (ANSI) A300 pruning standards.

D. Civil penalty fines are as assessed in accordance with Table 19.26.160-1, based on the diameter at standard height of the unlawfully removed or damaged tree trunk. If the diameter at standard height of an unlawfully removed or damaged tree cannot be established, the diameter of the remaining stump top shall be used in lieu of diameter at standard height. In cases where the stump has been removed, Burien will approximate the size of the removed tree(s) based on available evidence. If there is inadequate evidence, Burien shall assess a minimum ten thousand (\$10,000) dollar civil penalty fine per unlawfully removed tree. Fines may be assessed against the responsible party in addition to the cost(s) of restoration.

Table 19.26.160-1 Fines

<b>Unlawfully Removed or Damaged Tree DSH or Stump Diameter</b>	<b>Fines per Tree</b>	<b>Fines per Tree when Protected Through Easement, Tracts or Similar Document<sup>1</sup></b>
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<u>less than 6 inches</u>	<u>\$700 for replacement trees or trees planted to meet minimum tree credits</u>	<u>\$1,000</u>
<u>6 inches to 10 inches</u>	<u>\$1,000</u>	<u>\$1,500</u>
<u>Larger than 10 and up to 14 inches</u>	<u>\$2,000</u>	<u>\$3,000</u>
<u>Larger than 14 and up to 18 inches</u>	<u>\$3,000</u>	<u>\$4,000</u>
<u>Larger than 18 and up to 22 inches</u>	<u>\$4,000</u>	<u>\$5,000</u>
<u>Larger than 22 and up to 26 inches</u>	<u>\$6,000</u>	<u>\$7,000</u>
<u>Larger than 26 and up to 30 inches</u>	<u>\$7,000</u>	<u>\$8,000</u>
<u>Larger than 30 inches and Exceptional trees where an exception pursuant to BMC 19.26.040(3) has not been granted</u>	<u>\$9,000</u>	<u>\$10,000</u>
<u>Exceptional trees granted an exception pursuant to BMC 19.26.040(3)</u>	<u>\$12,000</u>	<u>\$15,000</u>
<u>Tree stump has been eliminated</u>	<u>\$10,000<sup>2</sup></u>	<u>\$15,000<sup>2</sup></u>

Footnote:

1. Tree(s) protected through easements, tracts, or similar mechanisms (such as grove easements, Native Growth Protection Easements, or Native Growth Retention Area.
2. Minimum fine amount; fine will be based on an assessment of the actual size of the tree when evidence allows.

E. The fine per tree penalty for repeat violations shall be determined by multiplying the fine per tree amount in Table 19.26.160-1 by the number of violations. For example, the fine per tree amount for second-time violations is multiplied by two, and the fine per tree amount for third-time violations is multiplied by three, and so on. A repeat violation is where a violation occurs at a later date than a current or previous violation.

F. If an arborist must be used to determine the tree type or size, the responsible party is responsible for paying the arborist fees.

G. The Code Enforcement Officer may allow a person who has had civil penalties imposed under this chapter to voluntarily participate in community service projects in lieu of paying some or all of the civil penalty. Community service may include, but is not limited to, restoration or education programs. The amount of community service shall reasonably relate to the comparable value of the civil penalties imposed.

4. Tree and Site Restoration.

A. Restoration Plan. Violators of Chapter 19.26 BMC or of a permit issued thereunder shall be responsible for restoring unlawfully damaged areas. The goal of the restoration

plan shall be a site condition that, to the greatest extent practical, equals the site condition that would have existed in the absence of the violation.

i. The restoration plan shall depict repairs of any environmental and property damage and restoration of the site.

ii. Tree violations that occur in critical areas and their buffers, on properties and within shoreline jurisdiction are also subject to any restoration plan requirements in Chapters 19.40 and 20.30, respectively.

iii. Restoration plans on private property shall be approved by the Director.

B. Restoration Plan Standards. The restoration plan shall be in accordance with the following standards:

i. The number of trees required to be planted shall be equal to the size and number of illegally removed trees according to Table 19.26.100-1.

ii. The minimum size and standards for a tree shall be in accordance with BMC 19.26.100(7)

iii. The restoration plan shall include a maintenance plan and an agreement or security to ensure survival and maintenance of restoration trees for a minimum three-year period.

C. In the event the violators cannot restore the unlawfully removed or damaged trees, the violators shall pay a fee-in-lieu of restoration to the city. The fee-in-lieu shall be as set forth in the fee schedule.

6. Hearing on Violation, Failure to Restore or Failure to Pay Fines: The City shall enforce this Code via issuance of a notice of civil violation to the violator(s) according to the procedures set forth in BMC 1.15. Violator(s) may administratively appeal the notice of civil violation, in which case a hearing on the notice of civil violation shall be held in accordance with BMC 1.15.140 through 1.15.180, and the hearing examiner shall determine whether violation(s) occurred and, if so, the hearing examiner may impose any appropriate fine(s) for such violation(s), as well as require restoration or fee(s)-in-lieu of restoration.

**Section Thirty-five.** Section 19.40.170, entitled **Mitigation requirements**, subsection 5, of the Burien Municipal Code is amended as follows with the remaining language remaining the same:

5. Unpermitted [H]impacts to [~~significant~~] trees within critical areas shall be mitigated according to [~~Chapter 19.25 BMC, Tree Retention and Landscaping~~]this subsection and fines per 19.26.160(3).

**Section Thirty-six.** Section 19.40.180, entitled **Vegetation management plan**, subsection 8, of the Burien Municipal code is amended as follows with the remaining language remaining the same:

8. A Forest Management Plan pursuant to BMC 19.26.060(7) can be approved in lieu of a vegetation management plan at the discretion of the Director.

**Section Thirty-seven.** Severability. Should a court of competent jurisdiction find any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section Thirty-eight.** Edits. For purposes of this ordinance, additions are underlined and deletions are stricken with brackets around the deleted language.

**Section Thirty-nine.** Corrections. The City Clerk and codifiers of the ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerkal errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

**Section Forty.** Effective Date. This ordinance shall be published in Burien’s official newspaper and shall take effect five (5) calendar days after publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, AT A REGULAR BUSINESS MEETING THEREOF THIS 20<sup>th</sup> DAY OF DECEMBER 2021.

CITY OF BURIEN

\_\_\_\_\_  
Sofia Aragon, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Heather Dumlao, CMC, City Clerk

Approved as to form:

\_\_\_\_\_

**Garmon Newsom II, City Attorney**

Filed with the City Clerk: Insert date

Passed by the City Council: Insert date

Ordinance No.: 780

Date of Publication: Insert date