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Key Components of Revised Land Use Tree Code

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Introduction

Staff is proposing several amendments to Burien Municipal Code Chapter 19.25, *Tree Retention and Landscaping*, based on requests from Council, observations of recent development activity, and feedback from members of the public. The purpose of tree regulations is to protect the urban forest by regulating tree removal and tree preservation on private property.

There are many reasons for regulating tree removal and tree preservation. Trees remove pollution from the air and water, remove carbon from the atmosphere, reduce energy use in nearby buildings, and reduce stormwater runoff and erosion by intercepting rainfall. Studies show trees increase economic vitality of cities by increasing property values, office occupancy rates, and shopping frequency, while lowering crime rates and health care costs.

Studies also show that the presence of trees reduces stress, and that people living in tree-lined neighborhoods are more likely to spend time outdoors getting to know their neighbors which builds community. Additionally, patients that can see trees from their window have faster recovery times.

For questions or comments regarding the tree code contact Josh Petter at planning@burienwa.gov

Background

The City of Burien City Council has taken many steps in recent year to manage trees within its urban forest.

To achieve these goals, Burien became part of the Green Cities Partnership managed by Forterra, a nonprofit organization. The Green City Partnership received multi-year funding from the Port of Seattle through Forterra. This funding enabled program coordinators to develop a 20-year plan, the *Green Burien Urban Forest Stewardship Plan* to enhance Burien's tree canopy as well as helping the city implement projects and volunteer programs to care for Burien's parks and natural areas, which has been adopted by City Council. This plan sets a goal of reaching 40 percent canopy cover equitably distributed across the city by 2038. More recently, Burien hired an Urban Forest Planner and certified arborist to assist with drafting and enforcing tree regulations.

The Comprehensive Plan provides numerous goals and policies that support tree retention in Burien. A list of Comprehensive Plan goals and policies are provided later in this report.

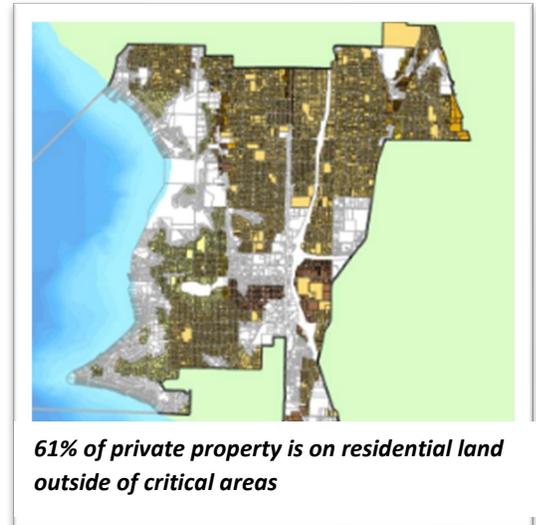
The draft tree regulations as presented in this document will help Burien implement its goals and policies for tree regulations and preservation as found in the Comprehensive Plan, Climate Action Plan, and as proposed by the Green Burien Urban Forest Stewardship Plan.

The Zoning Code regulates trees on private properties within several sections of Code. The following section is the focus of proposed amendments:

- *Chapter 19.25 Tree Retention and Landscaping:* This section is the focus of the amendments that are under consideration. Note that these amendments apply to private property outside of critical areas.

Other sections of Code are not the focus of proposed amendments and include:

- *Chapter 19.40 Critical Areas* contains additional requirements to address tree retention and vegetation in wetlands, streams, frequently flooded areas, geologically hazardous areas, fish and wildlife habitat conservation areas, and critical aquifer recharge areas. Many of these standards are mandated by the State of Washington.
- *Chapter 12.38* addresses street trees and trees on City property (parks and rights-of-way).
- *Section 20.30.040* addresses trees in shoreline management areas.



Objectives of the Amendments

Overall, the proposed amendments are intended to accomplish the following:

1. Increase the number of trees that are retained and replanted associated with new development
2. Modify tree retention standards to address different lot sizes and development scenarios to ensure standards are effectively supporting Burien’s urban forest
3. Establish minimum tree credits for all lots in the city, to provide a basis for planting *new* trees when lots undergo development
4. Establish off-site tree replacement options when planting on-site is not feasible
5. Establish a fee-in-lieu program to support initiatives identified in the Green Burien Partnership Urban Forestry Plan, with a particular focus on tree equity
6. Establish an “Exceptional Tree” definition and allow for code departures to serve as an incentive for the preservation of trees that are rare or exceptional
7. Prevent the introduction and require the removal of invasive species, which threaten Burien’s urban forest
8. Provide for the gradual implementation of the Memorial Drive Corridor Management Plan on private properties

Exceptional Trees (19.25.120)

The proposed zoning code introduces a new concept to preserve mature trees that are designated as being “exceptional” by the City of Burien due to their unique historic, ecological or aesthetic value.

Exceptional trees may only be removed if the trees are determined to be hazardous or causing infrastructure damage with no reasonable alternative to mitigation. On a lot undergoing development, exceptional trees may be removed if they limit building coverage to less than 85% of the allowable building coverage area.

The proposed code offers an incentive to preserve exceptional trees during development through flexibility in code standards. The proposed code allows additional height, a reduction of required setbacks to accommodate building around an existing exceptional tree, or a reduction in required parking. If such an exception is granted, then the property owner commits to preserving the tree through a covenant that is recorded through the King County Assessors office.



Minimum Tree Credits (19.25.130)

The proposed code introduces a concept for “*required minimum tree credits*”. Minimum tree credits will address many issues with today’s code. It will ensure that each new lot created through a subdivision has a minimum number of trees.

It will increase tree canopy on lots with few or no trees by requiring trees to be planted if a construction threshold is met. It will ensure that lots are not clear cut, and it provides a base number for calculating tree replacement when trees are removed. It prioritizes retention of large or exceptional trees. It provides flexibility and allows for a balance between tree retention and development.

Today’s Code: Here are some problems observed with the existing code:

- Lots with no trees that are experiencing development are not required to add trees under today’s code.
- New subdivisions are not required to plant or retain trees for each individual lot.
- Tree replacement standards are not sufficient, particularly on large lots.
- Tree retention standards do not take into account the size of the trees.
- A large number of trees can be removed during development, and replacement requirements can exceed the area suitable for replanting trees.
- Tree protection standards are not clearly defined or enforced.

Proposed code: The proposed code introduces a minimum standard for “tree credits” that would apply to all lots in the city, small and large. The standard is activated and required when tree removal results in a lot with less than the required minimum tree credits, with construction of 500 or more square feet, or when any new lot is created as follows:

Table 1: Required Minimum Tree Credits

Land Use Type	Required Minimum Tree credits per 1,000 square feet of developable area
Single-family development (detached dwellings, ADUs and DADUs) and townhouses on individual lots.	1
Multi-family development (attached dwellings including townhouse apartments and cottage housing).	1
Commercial, industrial, or landscape categories C, D, and F	0.15

Table 2: Credits per tree

Significant and Exceptional Trees							
Tree DSH ¹	6 to 10 inches DSH	Larger than 10 and up to 14 inches DSH	Larger than 14 and up to 18 inches DSH	Larger than 18 and up to 22 inches DSH	Larger than 22 and up to 26 inches DSH	Larger than 26 and less than 30 inches DSH	30 inches or greater DSH and all exceptional trees
Credits per tree	1	2	3	4	5	6	7

Additional tree credit information

- If a lot meets all of its required tree credits with existing significant or exceptional trees, a 25% reduction in landscape buffer can be granted.
- Wildlife habitat snags can be used for 10 percent of the total required credits when trees would otherwise be removed.
- For tree replacement, a 2-inch caliper deciduous tree counts as 1 tree credit and a 6-foot-tall evergreen conifer counts for 2 tree credits.

Tree Removal

The proposal is to create a *major tree permit* and a *minor tree permit* that would be required for all properties outside designated critical areas (such as steep slopes and wetlands) according to the following:

<i>No Tree Permit Required for:</i>	<i>Major Tree Removal Permit Required:</i>	<i>Minor Tree Removal Permit Required:</i>
Trees with trunks smaller than six inches in diameter at 4.5 feet above grade Removal by utilities due to interruption of utility service Trees in designated critical areas, shorelines, or public property. These are regulated separately.	The tree removal activities are associated with development activity.	Tree removal not associated with development activity.
Proposed Cost of Permit:	\$500	\$300
Review Process:	Reviewed with associated permit	Administrative Review

Tree removal – not associated with development activity (Section 19.25.140)

- Residents can remove a certain number of significant trees per year based on their lot size, which is capped at 3 years, and then resets, see table 3 below.
- If removal exceeds the allowances, the resident must get a permit and replant.
- Removal of Exceptional trees always requires a permit. When not associated with development tree removal would be approved if the tree poses a high risk to surrounding targets or is causing an infrastructure conflict.

Additionally, the following are considered to be “removed” and are subject to code enforcement unless recommended for removal by a qualified tree professional:

- Trees that are topped
- Any tree where more than 25% of the tree canopy is pruned

Table 3: Significant Tree Removal Allowances, No Permit Required

Property Size	Maximum allowance for significant tree removals per 12 months	Maximum allowance for significant tree removal over 3 years
Under 5,000 square feet	1	2
5,000 to 10,000 square feet	2	4
10,001 to 20,000 square feet	4	8
20,001 square feet or greater	6	12

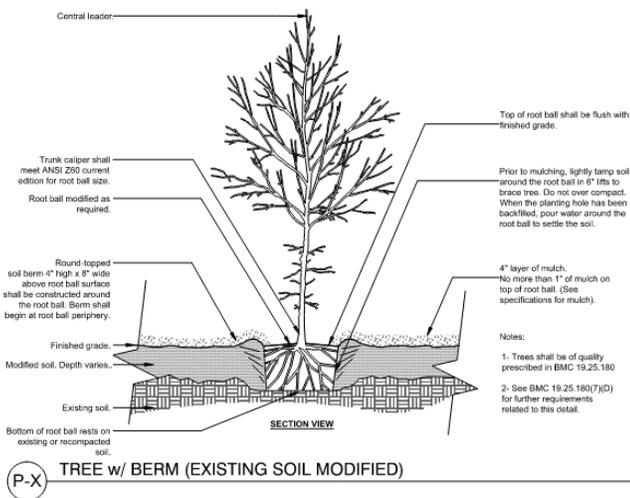
Tree removal – associated with development activity (Section 19.25.150)

The proposed code—like the existing code—requires trees to be retained when undergoing development activity. The standards for tree retention work in concert with required minimum tree credits and exceptional tree retention.

Standards for Replacing Trees (19.25.180)

When required trees cannot be retained as part of redevelopment processes, the proposed code would require tree replacement to meet the minimum required tree credits. Additionally, healthy exceptional trees removed during development would be required to be replaced at a 3 to 1 ratio.

Generally, trees would be required to be replaced on-site. The proposed code provides direction as to suitable location and species of trees, with an emphasis on ecological benefits, the long-term success of trees, and avoiding conflicts with infrastructure.



If on-site replacement is not possible, the proposed code provides for a fee-in-lieu program, or alternatives that serve the ecological function of the environment, such as restoration of stream corridors. The code specifies that tree replacement or required mitigation be completed before occupancy.

Fee-in-Lieu (19.25.180(5))

In some circumstances, on-site replacement of trees cannot be achieved. In this case, a fee-in-lieu program may be approved for use. The proposed code outlines the objectives and process for the fee-in-lieu program. City Council established the fee as \$700.00 per tree per resolution No. 472.

Funds collected from the fee-in lieu program will be used for Burien's Urban Forest Stewardship Plan, including tree plantings on public lands, tree code enforcement, forestry education, restoration activities, purchase of land for restoration of trees, or similar activities.

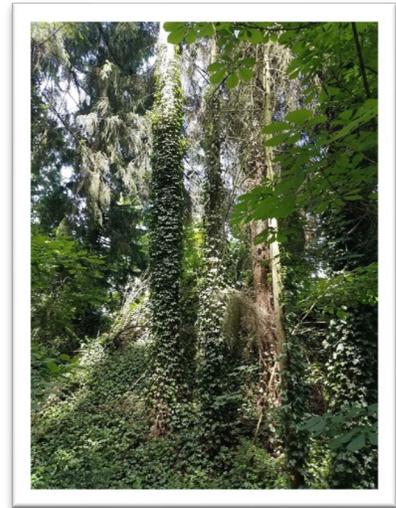
Note that the fee-in-lieu program is intended to be an option *only* if on-site retention or replacement is not possible; the proposed code does not offer the fee-in-lieu as an up-front option to avoid tree retention or replacement.



Noxious/ Invasive Species

The proposed code directly addresses noxious plants that serve as a threat to our urban forest in several ways:

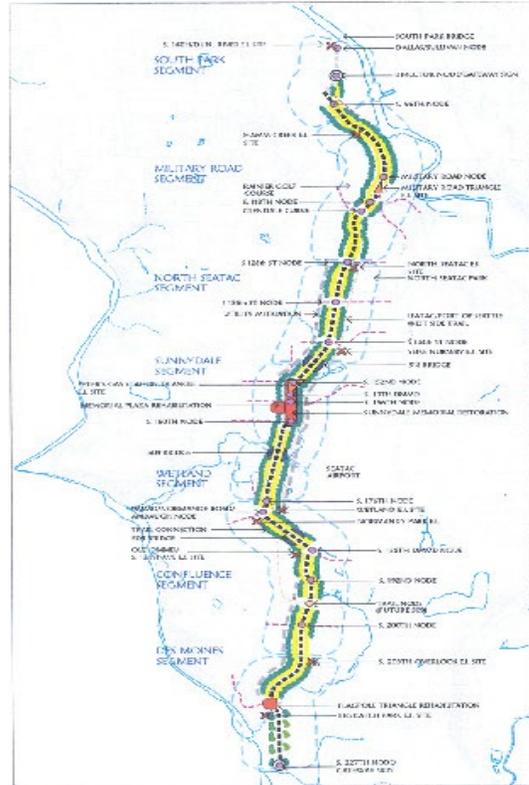
- When landscaping is required, the proposed code prohibits using plants identified in certain categories on the [King County Noxious Weed list](#).
- Additionally, existing noxious weeds are required to be removed. (19.25.080 (19-21))
- Invasive hedges adjacent to Burien's parks must be removed when a property is undergoing development. This is to ensure that we protect our urban forest in parks from laurel, holly, or other noxious species that harm forests. (19.25.080(20))



Des Moines Memorial Drive (DMMD) Corridor Management Plan (19.25.060(2))

The [Des Moines Memorial Corridor Management Plan](#)/ WWI Living Road of Remembrance was created via an interlocal agreement between King County and the cities of Burien, Normandy Park, SeaTac, and Des Moines. The plan provides a framework for memorial rehabilitation and corridor enhancement of DMMD. A key aspect of the plan includes the elm tree-lined road reminiscent of those of France in honor of World War I veterans.

The proposal provides guidance and requires property owners—both commercial and residential—to consult with Burien Public Works and to plant elm trees consistent with the Plan.



Des Moines Memorial Corridor.



Code Enforcement (19.25.240)

Code enforcement is a complex set of regulations and activities.

Regulations: Proposed section 19.25.240 introduces civil penalties and identifies violations. The proposed code identifies what is considered unlawful removal or damage to trees including damage to the root or trunk, clearing, poisoning or removing the tree in whole or in part.

Penalties for unlawful tree removal or damage are proposed as follows, are multiplied for repeat violations, and are greater for trees that are protected through an easement, tract or similar protective legal agreement. The condition, and sometimes species of the tree can be difficult to determine or appraise when removed illegally, therefore fines are uniform based on size or estimated size.

Table 19.25.240-1 Fines

Unlawfully Removed or Damaged Tree DSH or Stump Diameter	Fines per Tree	Fines per Tree when Protected Through Easement, Tracts or Similar Document ¹
less than 6 inches	\$700 for replacement trees or trees planted to meet minimum tree credits	\$1,000
6 inches to 10 inches	\$1,000	\$1,500
Larger than 10 and up to 14 inches	\$2,000	\$3,000
Larger than 14 and up to 18 inches	\$3,000	\$4,000
Larger than 18 and up to 22 inches	\$4,000	\$5,000
Larger than 22 and up to 26 inches	\$6,000	\$7,000
Larger than 26 and up to 30 inches	\$7,000	\$8,000
Larger than 30 inches and Exceptional trees where an exception pursuant to BMC 19.25.120(3) has not been granted	\$9,000	\$10,000
Exceptional trees granted an exception pursuant to BMC 19.25.120(3)	\$12,000	\$15,000
Tree stump has been eliminated	\$10,000 ²	\$15,000 ²

If a tree stump is removed as part of an illegal action, it is difficult to establish a value for the tree

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.

Code Enforcement Activities: Code enforcement and permitting includes the following activities:

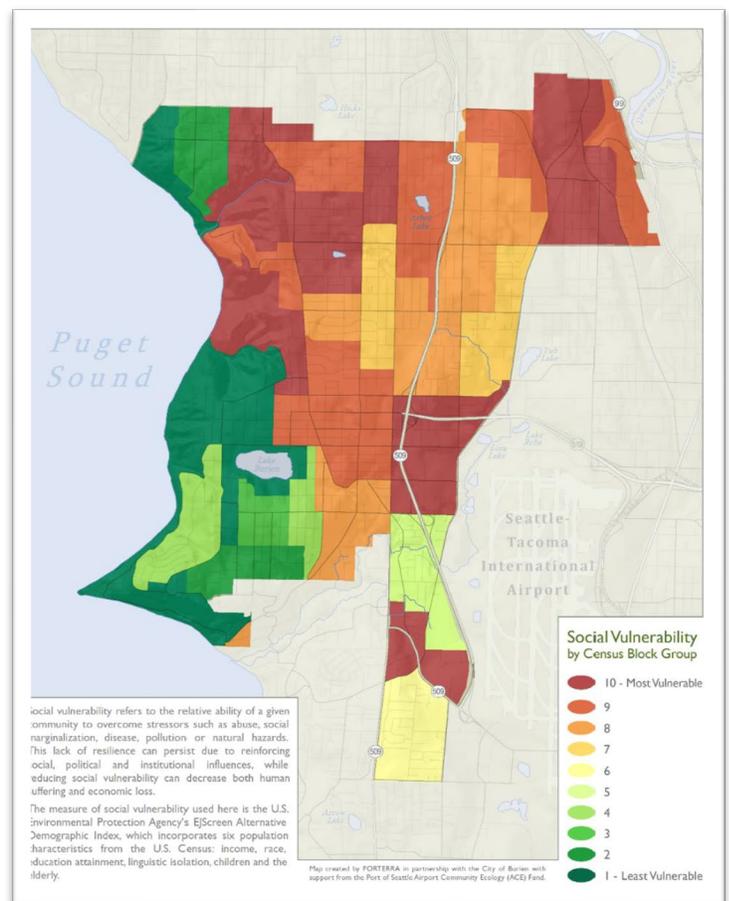
- Community education for both property owners and tree professionals about tree regulations;
- Development of streamlined permitting processes for minor and major tree permits;
- Reviewing construction documents and tree removal proposals;
- Site visits and consultation with property owners and developers in advance of tree removal and construction;
- Response to code violation complaints;
- Site visits and inspections after potential violations;
- Investigation into potential violations and best practices; and
- Negotiation and legal actions in response to confirmed code violations.
- Fines can also be paid through community service.

Social Equity

The Big Picture

Numerous studies show that the distribution of green space is correlated to measures of socioeconomic status, including race/ethnicity, education, and occupation. Neighborhoods with higher socioeconomic status enjoy greater access to green space and trees. People living near parks and green space enjoy less mental distress, are more physically active and live longer. Additionally, trees reduce air pollution and air temperature which contribute to smog and respiratory illness. See the [Burien Urban Forest Stewardship Plan](#), page 28, for a more complete discussion of this issue.

On the right is a map that illustrates social vulnerability by census tract, [produced by the EPA](#). The map incorporates income, race, education attainment, linguistic isolation, children and the elderly. Red correlates with higher social vulnerability in the City of Burien, according to these indicators.



Conversely, the second map to the right provides a snapshot of Burien’s tree canopy cover using 2016 King County aerial imagery and Lidar data.

The third map on the right shows tree equity scores ranging from 0 (low) to 100 (high). This combines various socioeconomic factors with tree coverage to produce a tree equity score. This data was produced by American Forests and can be useful in informing tree planting initiatives to increase tree equity across the city.

The Burien Urban Forest Stewardship Plan identified private residential land as the greatest potential for adding canopy coverage, but also noted the need to add trees to residential areas in areas with high social vulnerability factors.

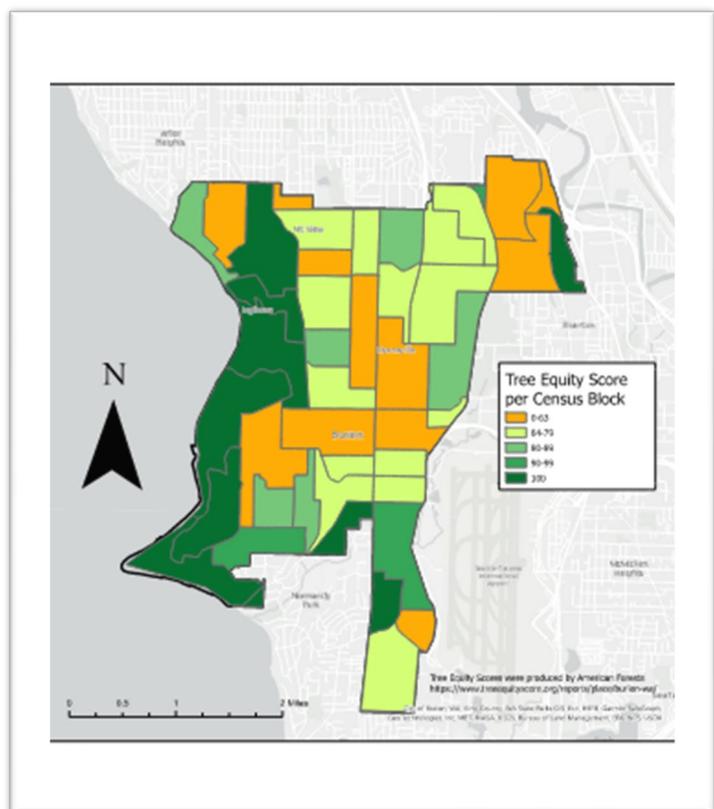
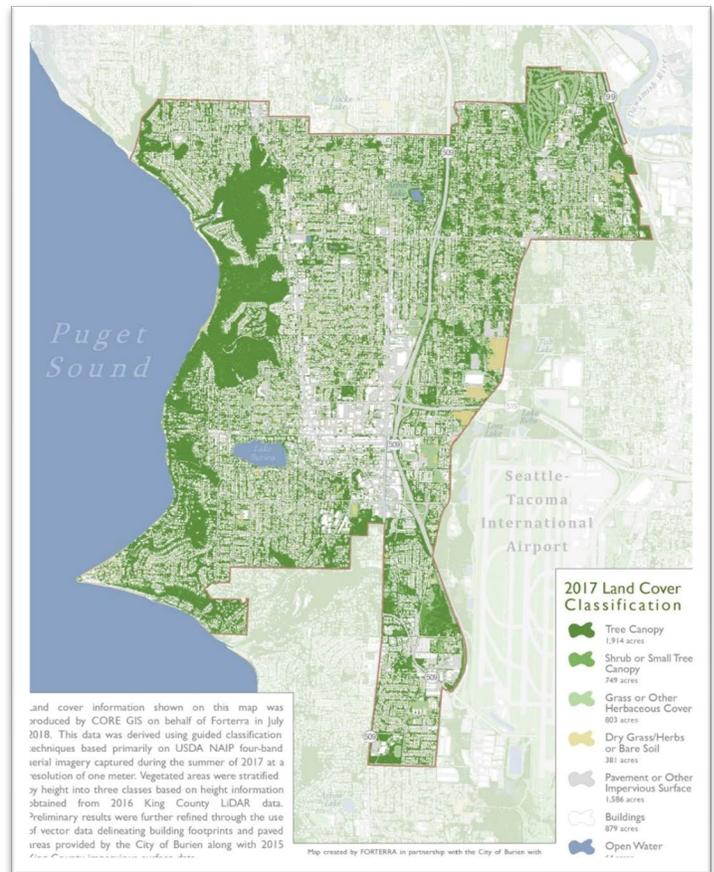
Tree Regulations in Burien

The proposed tree regulations respond to the need for increasing trees and urban canopy in all areas of the city, including—and perhaps *especially*—in areas with socially vulnerable populations. For this reason, the City of Burien’s tree regulations must be accompanied by other programs to effectively meet the dual challenges of:

1. Adding and requiring trees on both public and private properties in all areas of the city, including neighborhoods with socially vulnerable people while also
2. Supporting property owners who may speak another language, may not be familiar with government processes, or may not have sufficient resources to maintain healthy trees on their properties.

What does this mean for how Burien administers new tree regulations?

- *Upfront community education will be important.* Immediately following passage of tree regulations, the City of Burien will need to provide information to households, property owners and tree contractors to inform people of the new



regulations. Upfront education will require communicating information in different languages and formats.

- *Ongoing outreach and education is needed.* The City of Burien will need to dedicate staffing resources to undertake outreach and engagement to property owners who speak different languages to educate about new tree regulations, assist in applying for permits, assess trees, advise on tree maintenance, and work with code violations in finding creative solutions where necessary.
- *Code enforcement of tree regulations* will require working with people to achieve the aims of the regulations. It is likely that Burien staff will learn much about applying the proposed code in the coming year, with the need to adjust administrative processes over time.