MASTER BUILDERS ASSOCIATION of King and Snohomish Counties

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ISSUE BRIEF: TREE CODES AND HOUSING

BACKGROUND

The Puget Sound region is facing a housing crisis, and there is an urgent need to build more homes. Job and population growth are out of balance with available housing, which is pushing prices out of reach for many people.

Planning principles codified in the Growth Management Act (GMA)[1] are intended to guide our region's growth. It is important that cities keep these principles in mind as they plan for growth and enable the construction of housing, in particular:

- **Housing:** Encouraging a variety of attainable housing for all economic segments of the population.
- **Property Rights:** Protect property from arbitrary decisions or discriminatory actions.
- **Urban Growth:** Encouraging urban growth where facilities are adequate to meet service needs.

Steps have been taken at the state, regional, and local levels, in line with the GMA, to address the housing crisis. In 2019, the Washington State Legislature passed House Bill (HB) 1923 authorizing a new grant program to help address the housing affordability crisis throughout the state by encouraging production of more housing and a greater variety of housing types. Many cities[2] received grants from the Washington State Department of Commerce through HB 1923 to develop Housing Action Plans.

As cities work toward providing much-needed housing, they should take care not to unintentionally adopt policies that undermine their housing goals. In advancing other important community priorities, which may include tree regulations, cities should review new policies through a housing lens to mitigate unintentional impacts on housing.

KEY CONSIDERATIONS

As cities look to enact and update tree codes, it is vital that they do not undermine homebuilding with codes that are overly restrictive. Trees are beautiful and vital; they help clean the air and cool the streets in our cities. We also desperately need homes for our growing population, especially near jobs, schools, transit, and other amenities.

One possible future for the Puget Sound region is marked by stifled homebuilding, chronic undersupply, and limited housing choices. However, cities can choose instead to build the diverse housing we need for healthy cities and a sustainable future. To do this, city housing goals, including those identified in Housing Action Plans, must be supported by tree codes and other policy initiatives that allow for smart homebuilding, including denser, environmentally friendly housing. With objective and predictable tree

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[1] Under the Growth Management Act (GMA), Washington is committed to concentrating housing in designated urban growth areas (UGAs). The GMA directs jurisdictions to accommodate most of the projected population growth inside UGAs with access to adequate public facilities. The GMA requires local governments to develop a local Housing Element (RCW 36.70A.070(2)), planning for a variety of housing types, particularly denser housing.

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

codes, we can support a thriving tree canopy and deliver housing at the same time. If cities are willing to strike this balance, then the region will be in a far better position to provide the homes we need now and into the future, along with healthy tree coverage.

HOW TREE CODES CAN AFFECT HOUSING

Many cities want to protect their tree coverage as they grow their populations. Often, this is measured by tree canopy, which includes the branches, leaves, or other foliage from woody vegetation that provide shade to a city. Several cities have or are considering implementing tree codes intended to maintain, and in some jurisdictions expand, their tree canopies beyond what even exists today.

Some cities assume that dense development cannot coexist with tree goals. This has contributed to the adoption of restrictive tree codes that inhibit the production of the level of new housing needed to meet demand. Indeed, these codes often run directly counter to a city's ability to deliver on its housing targets. Many cities place high requirements and penalties on the removal of individual trees. Under some codes, especially those that focus on the preservation of existing trees, as opposed to replacement or replanting, one tree can take an entire parcel off the map in areas zoned for housing. All the homes that would have been built on that land are forgone. This is the case even when the net impact or removal can be effectively mitigated by thoughtful replanting on- or off-site that would better support the long-term health of trees in the neighborhood.

There are often other factors at play as well, including a desire by residents to maintain a neighborhood's low density at the cost of pushing new housing production further out. It is important to ensure that tree codes do not interfere with a jurisdiction's adopted comprehensive plan and development regulations.

However, no matter how well-meaning, tree codes can have the unintended consequence of preventing or constricting new housing in areas that are opportune for growth if they are unclear or too restrictive. It is therefore imperative that tree codes are developed with meaningful consideration of their potential impact on homebuilding.

BALANCING TREE CODES AND RESPONSIBLE HOMEBUILDING

Tree codes can have a significant impact on the Puget Sound region's ability to produce the housing it needs to accommodate current residents, newcomers, and future generations. A good tree code lays the foundation to responsibly maintain or grow the level of tree coverage in a city while also allowing for much-needed housing to be built. A tree code should provide predictability for property owners in terms of what is required to comply, for city staff to provide a more efficient project review, and for the public's expectations as to how the code will be applied to proposed developments.

Recognizing there isn't a one-size-fits-all approach for regulating trees, cities should adopt smart, targeted, and flexible approaches when developing tree goals and drafting tree codes. Tree retention goals, as they apply to private land, should provide flexibility to meet a city's tree goals in a variety of ways.

The following are key considerations in any decision-making process that will result in an effective, performance-oriented tree code:

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

  The GMA requires cities to plan for housing. Tree codes should be supported by meaningful analysis of the total number of lots and housing capacity affected by the proposed code, as well as potential impacts on a city's plan to meet GMA growth targets. Cities should plan to meet both housing and tree canopy targets.

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

  Set a tree goal that is based on local data and current and planned land use. Consider current tree cover conditions with data, such as a LiDAR study, so there is a clear baseline for measuring future progress. This allows the jurisdiction to set a meaningful goal and track progress toward achieving it.

  Snohomish County has taken this approach, enabling it to quantify the effectiveness of its tree code with yearly tree canopy reporting. King County's tree code is also outcomes focused.

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

  Ensure that tree code provisions have a direct relationship to the desired outcome of the code. If the desired outcome is primarily to retain and grow the tree canopy, then the language of the provisions should concentrate on canopy targets rather than the preservation of individual trees.

  Consider including critical areas, open spaces, recreation areas, and street trees within the system. If there are trees in critical areas on a lot that must be preserved, it is logical that they should also count toward any credit or canopy requirement. For example, a property that is heavily encumbered by critical areas, or a project that provides significant open space, should have its remaining developable area available to meet housing needs.

- **Establish clear procedures and legal authority for the benefit of applicants and staff**:

  For the benefit of applicants and staff, provide a code that is predictable, consistent, and clear on how an applicant can meet the requirements for trees on a project. Providing private property owners with clear regulations allows them to use and develop their properties with predictability and confidence. It should be clear what the requirements are, and which trees may or may not be removed.

  Uncertainty in the permitting process increases risk for project applicants and extends construction timelines, making it more expensive to build a home. The more streamlined and predictable the process, the fewer costs accumulate due to project delay, resulting in more affordable homes for consumers.

- **Provide flexibility by allowing multiple pathways to compliance with the tree code**:

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

  The two most effective structures that we have seen some cities and counties adopt are:

  - **Canopy systems**: Setting an overall canopy target that an applicant can meet by retaining or planting trees is an effective way to manage tree goals. As with a credit system, this can help meet a city's goals in the short and long term, while providing flexibility and balance with competing GMA goals and property rights.

  - **Credit systems**: Setting a reasonable number of tree "credits" to be provided for a property is an effective way to manage tree goals and encourage tree retention. The code can incentivize retaining existing trees by providing more credits for retention than new trees. It can also incentivize retaining trees in desired locations or groupings by providing more credits for trees in groups or in setbacks.

  These systems must remain functionally flexible to achieve their purpose; adding additional requirements undermines their ability to work as intended. For example, a credit or canopy

system should not include additional requirements to retain all trees over a certain size, or in certain areas of a property, or in certain groupings. Retention requirements will supersede broader credit or canopy requirements and negatively impact the time and cost of projects. Maintaining the ability for **off-site replanting** or a **fee-in-lieu** paid into a tree account are key elements to a well-balanced code.

- **Respect private property rights:**

  Private property owners need a range of options to maintain and improve their properties, contribute to the community's housing needs, and advance the city's tree goals. New tree regulations should not unnecessarily limit the development potential of a property or constitute a taking of land or property rights. There is well-settled law that mitigation or other requirements under development regulations must have a reasonable relationship to the impacts of a proposed development and be roughly proportionate to the impacts of a proposed development. The Washington Supreme Court previously struck down a blanket lot clearing restriction that did not take account of the impacts of clearing on any given site.[3] Similarly, tree codes should have provisions to consider site-specific conditions.

WHAT TO AVOID WHEN DEVELOPING TREE CODES

In conjunction with the guiding principles outlined above, there are specific policies that should be avoided in a tree code:

- **Mandatory retention requirements:** Local governments should not impose mandatory requirements regarding the retention of existing trees. These requirements often include required retention of: a) specified percentages of existing trees; b) certain sized trees; c) trees in certain groupings; and/or d) trees in certain locations.
    - These types of requirements dramatically limit design flexibility, thereby preventing the most responsible development of land. Requiring a set proportion of trees to be retained on a lot may limit actual housing significantly below what is allowed in a neighborhood's zoning. This is especially true if the retention requirement includes areas of the property that are used for required roads, stormwater facilities, and other infrastructure.
    - Mandatory requirements do not appropriately take into account that some properties are well-suited for denser housing and are currently heavily treed. At the same time, other properties that will not provide density might have fewer trees today.
    - Many of the now-mature trees in our region were planted with the last generation of housing and grew into the current urban and suburban environment. Their size, type, or location may not be well-suited for a new home or community. In many cases, retaining individual existing trees or small groups also creates future hazards and eyesores for the community, whereas new trees can be planted in considered locations where they can grow unimpeded as the community matures. A mixture of tree retention and new plantings can grow into new communities to provide benefits for the next generation.
- **Reliance on code deviations for flexibility:** Allowing deviations to mandatory retention requirements on certain tree types, trees in certain locations (e.g. groves, in setbacks), or trees of specified sizes is not an effective way to introduce flexibility into a tree code. Requiring such a

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

determination adds another approval step and introduces uncertainty to the homebuilding process.

- **Staff discretion to decide tree retention requirements:** Decisions about tree retention or where new trees must be planted to the discretion of staff. This undermines predictability. As with the above point, an effective code should be sufficiently clear regarding what is allowed and not allowed in a given situation.