

Tree Code Audit Report



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Introduction

Lake Oswego's Tree Code was adopted in 1971 and has been amended several times since, most recently in the past year. In July of 2015 the Lake Oswego City Council passed Resolution 15-32 creating an Ad Hoc Committee to review and propose amendments to the Tree Code. The resolution charged the Committee with helping the Council meet its goal to review the Tree Code and "to identify better ways to meet the intent of the code while responding to residents' desire for less stringent regulation... [to] reduce staff time and administrative overhead associated with tree regulations... [to] ensure that criteria prohibiting or allowing tree removal are clear and objective." The Committee was instructed to focus on amending and revising the current code, not a wholesale replacement or repeal of the Tree Code, and to complete the project by June 30, 2016.

The following goals for the review of the Tree Code are based upon the City Council's charge. Each goal can be examined with respect to the input received from the public and stakeholders, the regulatory strategies of the current code. Consideration of these factors allows for a greater focus on the aspects of the current Tree Code that might be amended to achieve these goals.

- Goal 1: Lessen the regulatory burden of the Tree Code on property owners while protecting quality of life and the wooded character of the community.
- Goal 2: Improve predictability in the permit process; use clear and objective code criteria.
- Goal 3: Reduce the time it takes to receive a permit, and the cost of administering tree regulations.
- Goal 4: Ensure amended regulations reflect public input, are legally sufficient, and do not conflict with other City codes and standards.

There are a number of factors for consideration when drafting or amending ordinances. One is to clearly communicate the desired purpose and intent of an ordinance, including the system of relationships and interventions being used, to stakeholders both within and outside government¹. Stakeholders outside government, especially groups that are affected by the decisions, should be informed that the process is taking place, and involved in the decision making process in order to reduce the chances of the ordinance being challenged. Next, the issue can be researched to see if other municipalities have addressed it, how, and to what ends². These processes can help identify any potential issues or conflicts, and how they were

¹ David L. Corliss, (1997) "Ordinances, Statutes, and Democratic Discipline: A Local Perspective on Drafting Laws" in Phillip J. Cooper and Chester A. Newland, Handbook of Public Law and Administration. Jossey-Bass. 213, 216-217, 220

² Ibid at 214-216, 218

dealt with by other jurisdictions. Successful cases can be used to shape the process and frame of the ordinance. Spatial and temporal limitation should be considered in this process because what has been successful in one specific time and place might not translate to another. Finally, care should be given to the definitions, terms, and phrasing used in the ordinance in order to ensure they are fully understood³.

This report is intended to assist the Ad Hoc Committee in their work by identifying areas of the Code that conflict with the goals stated above. It is meant to act as a guide to aid discussion and provide information that can be used to make decisions regarding Tree Code amendments. The report begins by describing the input received from stakeholders and the public. This is followed by a summary of key elements of the current Tree Code and related issues as well as a summary of tree codes in comparable cities in the region in order to provide insight into alternative methods to address the issues raised by stakeholders. The report concludes with an audit that covers each section of the Tree Code and details the changes that could be considered in order to improve overall efficiency, effectiveness, and resident satisfaction with the Tree Code as outlined in the Council charge. The Committee may identify additional issues or recommendations that are not covered in the audit or that go beyond the scope identified in the Council charge.

Basis of Review

Input from the public and stakeholders collected during the Urban Forestry Summit (“Summit”), builders and arborists focus groups, and City staff is reviewed below in order to identify common themes and issues with the current Tree Code. Summit attendees expressed a mix of concerns, including negative impacts to property values from tree removal, potential damage to property by trees, requests for more strict regulation, and requests for less strict regulation or no regulation at all. Finding a way to effectively address and balance these dichotomies in a manner that reduces the time and cost of implementing the code defines the challenges of the Tree Code amendment process.

Central Themes of Public Input

A major theme identified in the public and stakeholder input is to ensure just implementation of the Tree Code. The input reflects a consensus on the importance of consistent and fair enforcement of regulations and a desire to remove and prevent any conflicts of interest that might unfairly influence decisions made in the application of the Tree Code. If a party involved in the permitting process stands to benefit from a decision made in the permitting process then there is a conflict of interest which leads to the potential for abuse of

³ House of Representatives, Office of Legal Counsel, HOLC Guide to Legislative Drafting at http://legcounsel.house.gov/HOLC/Drafting_Legislation/Drafting_Guide.html (accessed 11/4/2015)

the system, either actual or perceived. In addition, a tree code that contains aspects which are difficult to monitor and enforce will often lead to unequal treatment of different parties, resulting in a general public dissatisfaction with the code. Clear, scientifically-based and objectively measurable standards should be sought. Ensuring the language of the Tree Code and its intentions are clearly and as objectively communicated as possible can help reduce public perception of arbitrary and capricious implementation of the Code. Clarification of the situations in which the Tree Code, as opposed to the Community Development Code, guide decisions made with respect to the removal of trees will also help reduce the public perception of loopholes in the code application.

Another main theme was a general desire for a simplified process. The desire for online applications was a common suggestion in the feedback received. It was also generally agreed that information should be easily accessible and available online to help inform people about the application process and about tree care and removal in general. There was also a common request for simplified removal of dead or hazard trees, as well as tree removal in emergency situations. Most notably was the desire to shorten the process, especially with respect to public notification periods and reviews for type II permits.

Net Cost of Tree Code Administration

Implementation of the Tree Code requires the combined work of several City employees and a contract arborist in order to review and issue permits, provide customer service, inspect sites and process violations, and retain public records. The work of the City employees is equivalent to approximately 1.25 full time employees, which costs the City around \$147,000 per year. Revenue collected from permitting fees related to the Tree Code are part of the City General Fund; calculations of this revenue are displayed in Table 1. These numbers show that the net cost of implementing the Tree Code as

Table 1. Annual Tree Revenue

	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14
Gross Annual Tree Revenue	48,755	62,845	70,545	76,101	95,448
Tree Cutting Signs and Posts	-2,000	-2,000	-2,500	-2,500	-3,000
Contract Arborist	-16,991	-31,590	-35,496	-38,549	-37,318
Net Revenue	29,764	29,255	32,549	35,052	55,130
Staff Cost	-147,000	-147,000	-147,000	-147,000	-147,000
Net Cost	117,236	117,745	114,451	111,948	91,870

of financial year 2013-2014 is approximately \$91,870. In the last five fiscal years, less than 38% of the cost to administer the Tree Code has been recovered by permit fees.⁴

⁴ Funds collected for Tree Code violations or for payment in lieu of mitigation planting are held in a separate Tree Fund account that is used for tree planting throughout the City and for education, such as Community Forestry

These themes identified from public and stakeholder input correlate directly with the Council's charge to the Committee and together with an understanding of the costs of implementation provide the basis of review for this report.

Tree Code Overview

In addition to input received from the public, input collected from staff is discussed below to reflect on the current Tree Code with respect to the Council charge. This input represents suggestions from people directly involved in the implementation of the Tree Code. Input generated by a Public Administration class at Portland State University is included as well. Though the input is not from members of the Lake Oswego community, their ideas provide an impartial "outsider's" perspective on potential process improvements to help streamline and improve the current application and review procedures. Finally, recommendations from an Ad Hoc Tree Code Task Force that was appointed in 2000 are referenced for specific suggestions. The Task Force worked for eleven months to "assess how the Code is being interpreted, how the public perceives the Code, and what measures can be taken to improve the Code".

There are currently ten types of tree permits for the removal of trees: dead, hazardous, invasive, type I, type II, minor forest management, major forest management, emergency, verification, and topping. The requirements for each type of permit attempt to create a balance between individual rights and the interests of the community. As such, there are clear differences in the burdens placed on property owners between permit types. The Tree Code also establishes protection measures for construction activities related to ministerial, minor, and major development. The processes involved in applying for and obtaining these permits are summarized below, followed by suggestions regarding ways to improve the processes, public perception, efficiency and effectiveness of these types of permits based on the Council charge.

Permits with Low Levels of Regulatory Burden

Of the ten permits, six are issued for trees that may be detrimental to the community in some way, or where the activity is considered a matter of discretion for property owners. These include invasive, dead, hazardous, emergency, type I permits, and minor forest management permits. It is free to apply for an invasive tree permit and applications are accepted in person, by mail, and through email. Invasive tree permits only require a completed application form and a photo or leaf sample for verification. In the event that the leaf sample or photo is inconclusive, the City contract arborist will visit the site to confirm. Dead, hazardous, and emergency permits have a flat fee of \$16 no matter how many trees are involved and require a

Public Workshops for Tree Care & Tree Cutting. All of the funds in this account were transferred in fiscal year 2013-2014 to the Parks & Recreation Department for a Habitat Enhancement Program to comply with Metro's Title 13 as part of the Sensitive Lands Program.

submitted application form, site plan, and photograph of the tree which can be submitted by mail or in person. Hazard tree applications also typically require a “hazard evaluation form” and report by a certified arborist hired by the applicant. The City contract arborist may have to visit the site to confirm dead deciduous trees in the winter time, or to review and confirm hazard tree reports prepared by the applicant’s arborist.

Type I permits allow a property owner to cut up to two trees under 10” in diameter per calendar year, cost \$16, and simply require an application fee and site plan, which can be submitted by mail, email, or in person. Staff visits are not made for type I permit applications. Similarly, minor forest management permits are issued to remove up to six trees per acre and any number of dead, hazardous, or invasive trees on a large forested tract at a cost of \$16.

Due to the nature of these six permits types, the restrictions placed on property owners are generally accepted. Only minor changes which clarify parameters and simplify procedural requirement may be necessary under the Council charge. Suggestions regarding ways to improve the processes, public perception, efficiency and effectiveness of these types of permits based on the Council charge are summarized below.

Suggestions from the Public:

- Adjust code to be more flexible for type I trees.
- Allow for the removal of a certain number of trees without a permit.
- Make the application and notification processes available online.
- Include processes to remove trees that are diseased or in decline.
- Allow the removal of trees that are within a defined area of a building as a type I permit.
- Limit regulation to trees in the public right of way, on public lands, or in other specifically defined areas (i.e. sensitive lands, wetlands).
- Include diagrams in the code to clarify meanings.

Suggestions from City Staff:

- Expand the definition of dead trees to include dying and diseased trees. The current definition often requires property owners who wish to remove unhealthy trees to apply for type II permits, which are more expensive and time consuming to obtain.
- Consider a simplified process for tree species that are considered common nuisances or are regularly identified as hazardous, but are not invasive.
- Exempt trees that are planted and maintained as shrubs and expand the list of exempt woody shrubs to include rhododendrons, camellias, and other similar shrubs.
- Increase the size and number of trees that can be removed under a type I permit.

Suggestions from the Public Administration Class:

- Provide a simple, on-line application with an option for online payment.
- Simplify the language used on application forms.

Suggestions from the Tree Code Task Force:

- Change the definition of tree from 5" DBH to 6" DBH.
- Change the specifications for type I permits from trees between 5" and 10" DBH to between 6" and 12" DBH.
- Allow for the removal of certain species of trees under the type I criteria, regardless of size.

Permits with Greater Regulatory Burden

The remaining four permits types cover tree removal for specific situations, such as tree management, development and landscaping. Topping permits are issued when tree topping is required for public safety or, occasionally, in the interest of wildlife. There is an application fee of \$16 for topping permits. Major forest management permits are issued for "large forested tracts" and allow the removal of trees identified in a forest management plan; it costs \$167 plus \$16 per tree up to \$500, and a \$21 records retention fee, plus the cost of hiring a forest management professional. Verification permits are issued for trees that were approved for removal as a part of a land use decision related to major or minor development, and requires a site plan to be submitted with the application and a fee of \$48 plus \$7 per tree, and a \$21 records retention fee.

Type II permits are for trees being removed for construction and/or landscaping purposes. The permit requires submission of an application, questionnaire, site plan, and mitigation plan and must be presented in person. They cost \$167 plus \$16 per tree and a \$21 records retention fee. After the application and supporting materials are submitted, a sign provided by the City must be placed in a visible location on the property and a 14-day public comment period begins, during which staff visits the site. Next, staff posts a sign at the site notifying the public of the tentative decision on the application and there is another 14-day period during which the decision can be appealed. Type II permits are the most time- and cost-intensive applications for both the City staff to administer and property owners to apply for. The majority of type II permit applications are approved as is indicated in Table 2; however, it is common for an application to be withdrawn or for trees to be partially withdrawn from an application in order to avoid denial of a permit. Partially or fully withdrawn applications are typically the result of the applicant being notified by staff that the application will not be approved because one or more trees do not meet the criteria for approval. The applicant will frequently elect to withdraw the permit in order to recover a portion of their application fees if

they do not wish to appeal the decision. In other cases, applications are withdrawn due to an error in the type of permit applied for or due to neighborhood opposition.

Table 2. Type II Permits

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Avg.
Total Type II applications	261	361	337	314	235	183	264	331	320	357	377	326	305.5
Applications Fully Approved (% Fully Approved)	230* 88%	317* 88%	299* 89%	279* 89%	214* 91%	165 90%	253 96%	310 94%	280 88%	321 90%	355 94%	280 86%	275.3 90%
Applications Denied (% Denied)	3 1%	5 1%	6 2%	10 3%	2 1%	8 4%	2 1%	2 1%	7 2%	4 1%	5 1%	2 1%	4.67 2%
Applications Fully Withdrawn (% Fully Withdrawn)	14 5%	26 7%	16 5%	15 5%	12 5%	9 5%	8 3%	14 4%	2 1%	5 1%	11 3%	14 4%	12.17 4%
Applications Partially Withdrawn/Approved (% Partially Withdrawn/Approved)			No Data*			3 2%	3 1%	9 3%	9 3%	9 3%	5 1%	5 2%	3.58 1%

*Type II permit data prior to 2009 did not indicate if parts of an approved permit had been withdrawn or not approved.

Suggestions from the Public:

- Limit burdens on property owners and intrusions on individual rights.
- Require Type II permits for all tree removal on commercial property.
- Create standards based on the size and species of the tree to be removed.
- Eliminate the sign notification process.
- Allow permit applications to be submitted online.
- Notify neighbors and neighborhood associations of type II permit application by email.
- Consider property characteristics in permitting decisions.
- Establish neighborhood-specific regulations.
- Allow trees to be removed if they are damaging structures on the property, or are likely to in the near future.
- Avoid the potential for contentious situations between neighbors.
- Create a process to expedite the notification requirements if neighbors provide written acknowledgment and approval of the proposed tree removal.
- Establish a fee structure based on the size of the tree to be removed.
- Ensure that the revenue obtained as a result of the Tree Code pays the cost of administration.

Suggestions from City Staff:

- Remove the subjectivity of the type II criteria. Any person at any time could argue that the removal of a tree has a “significant negative impact on the character, aesthetics, or property values of their neighborhood”. Personal motivations such as disputes between neighbors and personal attributes such as propensity to complain can result in unequal treatment of property owners and applicants.
- Consider the loophole created by the removal of trees related to landscaping plans, which can be used to remove trees for another reason, such as to improve their view.
- Consider a system of increasing fees per tree if multiple trees are being removed from a property.
- Place limits on the number of trees a property owner could remove under a type II permit in a given time frame.
- Exclude type II permits based on their distance from development, issue type I permits instead when trees are close to development.

Suggestions from the Public Administration Class:

- Allow property owners to print and post their own notices.
- State the costs of permits as simply as possible.
- Limit appeals to people who commented before the decision was issued.
- Establish conditions for automatic approval of a permit.
- Certify local arborists and/or tree-cutting services that complete special training for expedited permitting.

Suggestions from the Tree Code Task Force:

- Require type II permits for the removal of certain native tree species, regardless of size.
- Reduce the required public notification period to ten days.
- Notify people who made comments during the public notification period of the decision by mail and allow seven days to appeal.
- Provide written notices to neighbors within 100 feet of the property by mail.

Tree Protection and Mitigation

An applicant must submit a tree protection plan for review and approval by the City prior to conducting any development activities including, but not limited to clearing, grading, excavation, or demolition work on a property or site, which requires ministerial, minor, or major development approval. The permit costs \$78. The applicant is required to install a 6-foot chain link fence around the tree protection zones (typically the dripline) of the trees and to attach signs on the fencing stating that inside the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the City Manager and arborist for the

project. The fencing must be installed and inspected by City staff before the commencement of construction activities. An arborist may be required to prepare the tree protection plan and submit a report. An arborist is also required to oversee any excavation that occurs inside the tree protection zones.

Mitigation is required for type II permits, major forest management permits, tree removal that is not dead or hazardous from non-single family lots, emergency tree permits, and for invasive permits if the trees are removed from the public right-of-way or Sensitive Lands, or if the tree was part of an approved landscape plan. Mitigation is required at a ratio of one tree for every tree that is removed. The mitigation trees must either be a minimum two-inch caliper deciduous tree or a six- to eight-foot-tall evergreen tree for each tree removed; however, the size of mitigation trees required for an invasive permit that is in Sensitive Lands can be either a minimum one-half-inch caliper deciduous tree or a minimum two-foot-tall evergreen tree. Payment in lieu of planting mitigation is allowed only if staff determines that no feasible alternative exists to plant on the site. The payment in lieu of planting fee is \$125 per tree. Mitigation required as part of a minor or major development permit is inspected by staff prior to the final building inspection. Mitigation that is not associated with a minor or major development permit is generally not inspected because the total number of permits needing inspection exceeds staff capacity.

Suggestions regarding ways to improve the processes, public perception, efficiency and effectiveness of tree protection permits and mitigation requirements based on the Council charge are summarized below.

Suggestions from the Public:

- Eliminate mitigation requirements for heavily wooded property.
- Allow for off-site mitigation alternatives within the same neighborhood and/or on public property.
- Create tree maintenance requirements for mitigation.

Suggestions from City Staff:

- Require tree protection plans for development such as plumbing permits and certain projects within the public right-of-way that are not ministerial, minor or major development.
- Establish the authority to allow conditions of approval to be applied to tree protection plans.
- Create a deposit for trees to be protected. If the trees survive two years after the conclusion of construction the deposit is returned.

Suggestions from the Public Administration Class:

- Allow removal of invasive species as an alternative to mitigation.

Suggestions from the Tree Code Task Force:

- Reduce the minimum size of deciduous replacement trees from 2" to 1.5" due to increased availability and survival rates of smaller caliper trees.
- Establish a requirement that native trees must be mitigated with native trees when removed.
- Require removal and mitigation if a tree is damaged and an arborist determines it is likely to die within five years.

Other Tree Codes

Tigard, OR

The City of Tigard allows removal of trees on single-family private property without a permit. Permits are only required to remove street trees, median trees, heritage trees, trees planted with money from the Urban Forestry Fund, native trees on sensitive lands, and trees which were required as a condition for approval of development of a multi-family, commercial, or industrial lot. The definition of tree established by Tigard is "a woody perennial plant... with the capacity to achieve a mature height greater than 16 feet and primarily referred to as a tree in scientific literature." (Tigard Municipal Code 8.02.050(V)). DBH is only used in the definition of street trees, which are defined as "any tree greater than 1.5 inch DBH..." (Tigard Municipal Code 8.02.050(T)).

When permits are required, there is one permit application with two separate processes of review that is determined by the situation. Simple situations are reviewed by staff. These include trees in poor or hazardous condition, trees that are damaging structures or infrastructure, or that are preventing allowed development. These permits are free for residents to obtain. Complex situations, which includes cutting to improve solar access or view and cutting due to a personal aesthetic or location preference, are reviewed by staff or a designated City board or commission. The decisions made in these cases are discretionary. In complex situations there is a \$307 fee per tree cut. In both simple and complex situations, trees cut under the permit process usually require a replacement tree to be planted.

When lots are developed in Tigard a minimum percentage of tree canopy is required in the Community Development Code. Depending on the development the required tree canopy coverage ranges from 25% to 40%. These requirements apply no matter what the coverage was prior to development. However, credit is given towards the canopy requirements for preserved and native trees as well as preserved or planted stands. If the required canopy coverage cannot

be met, a fee is paid to the City. The fee is calculated based on the area of canopy the development is short multiplied by the value of the canopy (median wholesale cost of 3" deciduous tree in the Willamette Valley divided by 59).

In addition, Tigard has an Urban Forestry Manual that details the administrative rules related to planting, caring for, removing, and replacing trees. The Manual has specific sections for each of the categories of trees that require permits for removal and each section provides clear, objective standards and guidelines for the implementation of the tree code. The Urban Forestry Manual clearly communicates the criteria for approval, mitigation requirements, and the process to remove trees. The Urban Forestry Manual is large and incredibly detailed, containing a total of 113 pages.

Durham, OR

The City of Durham, Oregon requires property owners to obtain a permit for the removal of any tree that is 5" diameter or greater measured at 24" above grade, also known as the diameter at breast height (DBH). There are eight permit types, all of which have a non-refundable application fee of \$25 for the first tree and I \$10 for each additional tree.

The first four permits types (A, B, C, D) are reviewed under a type I process, with approval or denial determined by staff. Type A permits are issued for trees that are dead or dying. Type B permits are issued for trees that are dangerous or potentially destructive to property. Type C permits apply to trees that are being removed to enlarge to footprint of a structure on a developed lot, and are only issued after the building permit. Type D permits, similar to Lake Oswego Type I permits, allow property owners to remove one tree between 5" and 10" DBH per year which does not qualify for any other type I process permits.

The last four permit types are reviewed under a type II process with approval or denial determined by the Planning Commission. Type E permits are issued for trees above 10" in diameter that do not qualify for Type A-D permits. Type F permits are used for the removal of trees in commercial and industrial zones. For tree removal associated with a land use decision, such as land divisions, a type G permit is issued. Type G permits are intended to preserve the maximum number of trees on a development site. The City may require the site design to be altered as allowed by the code, and where applicable may require tree-related decisions to be approved by the City arborist, require timely repair of damaged trees, and stop development if the code is violated. The developer is required to use one or more of the following techniques to preserve trees: repair, pruning, structural support, fertilization, etc.; using taped and fenced tree protection zones; utilizing non-harmful procedures to assess tree health; requiring contractors to acknowledge the preservation requirements in writing; and coordinating with an arborist in order to save additional trees not included in the original plan. Finally, Type H permits are only issued for trees that were part of a preservation plan but died within two years

of the project completion. It is the responsibility of the property owner to notify the city that a preserved tree has died, and to replace the tree. A final inspection of the property is conducted two years after the final planting. All decisions for permit types E-H may be appealed within ten days of the decision.

Type A, B, and D permits do not require mitigation. Mitigation requirements for Type C and type E permits (mitigation for developed residential lots) are that the replacement tree must be at least 2" diameter at the top of the root ball for deciduous trees, or six feet tall for evergreen trees, measured from the top of the root ball and excluding the leader. The property owner may select the species of the replacement tree provided it meets the general intent of the tree code. The property owner has six months to plant mitigation trees, and may receive a 60 day extension for extenuating circumstances such as inclement weather. Inspections occur upon the completion of the initial planting, and again two years after the final planting. Mitigation for type F and G permits have the same size requirements as described above, but must be selected from a tree list established by the City. In addition, the resulting canopy cover is required to be 35% at maturity, or the same as it was at the start of development, whichever is less. A 200% canopy credit is provided for preserving trees of specific species indicated by the City that are in good condition and are appropriately located for preservation. A 125% credit is provided for planting native trees. Finally, the code specifies the spacing requirements for small, medium, and large trees.

West Linn, OR

The City of West Linn defines a tree as 6" or larger DBH for Oregon White Oak, Pacific madrone, and Pacific Dogwood, and 12" DBH for all other tree species. Trees that are typically grown as shrubs are excluded from this definition and may be cut at will by property owners. Street trees are also excluded from the definition, and the City retains sole authority to plant or remove them. Removal of any tree, as defined above, requires a permit, but the application is free. There is one application form, which requires the number, diameter and species of the trees to be removed, and a justification for removal based on criteria established in the code.

Criteria that the code indicates may often lead to permit approval are:

- Encroachment into the public right-of-way that is damaging or might damage infrastructure.
- Potential to cause structural damage to a building foundation, water and sewer lines, etc.
- Basal flares within 10 feet of a building footprint.
- The existing building footprint lies within the tree dripline.
- Removal of fruit trees with significant or total reduction in bearing.
- Thinning to improve the health of other trees.

- Removal to allow solar access to an extremely shaded property.
- Removal for landscaping which will not affect neighbor's views and regarding which none of the denial criteria are found to be present.

Supplemental materials that must be included with the completed application include a site plan detailing the location of the tree(s) to be removed, building footprints including any planned expansions, location of impervious areas, and a photograph(s) of the area with the tree(s) to be removed marked with brightly colored tape. A report from an arborist regarding the health of the tree(s) to be removed is optional, unless the claim is that the root structure is damaged in such a way that the tree will die. If a resident wishes to have a street tree removed they may make a request to the city, which will be reviewed under the same criteria as tree removal permits.

The review process begins with a completeness check of the application. In the event the application is not complete, the applicant will have 10 business day to address the deficiencies. A site visit is then conducted to assess the accuracy of the application. If the tree is determined to be dead or dying, has root damage that is likely to impact the tree's health and stability, exhibits a dangerous growth pattern, or if the tree must be removed to restore or maintain utility service, then there is no notification required and the permit may be issued. If these are not the case, and the tree is not visually prominent and of significant size, then a sign is posted on the property in clear view of the public right-of-way to notify the public. In the event that the property does not have frontage on a public right of way, a sign is placed as close as possible with directions to the site. If the tree is visually prominent and of significant size then notification is also mailed to all property owners within 500 feet of the property. Mailed notifications include the address where the proposed tree removal will occur, a copy of the site plan, a description of the trees, the property owners justification for removal, the expected decision date, instructions on how to request a copy of the decision, and information about appeal rights and processes.

Criteria that the code indicates may lead to permit denial include:

- Visually prominent.
- Healthy and of sound structure.
- Significant in size.
- Important to the health and safety of a larger group of trees.
- Helping prevent soil erosion on a slope.
- Acting as a privacy barrier between properties.
- Removal is for the sole purpose of improving view.

Property owners who remove trees are encouraged to plant replacement trees. If a decision is not issued within 20 days of the submission of the application, or if a ruling on an

appeal is not made within 30 days, the permit is considered automatically approved. Tree permits are good for 12 months from the date they are issued.

The West Linn tree code also establishes criteria for designating heritage trees, which applies point values to a number of factors. The factors include a minimum circumference at five feet above ground level depending on the species (5 pts.), location (1-6 pts.), condition (0-5 pts.), and historical importance (1-5 pts.). The point values for each criteria are multiplied to achieve a total. If the total is over 180 points then it can be considered a heritage tree. Heritage tree applications are only considered if the property owner gives their written consent to the application and allowed the city reasonable access for tree maintenance. A deed restriction is required to be recorded on the property, which is paid for by the City, in order to put future property owners on notice of the heritage tree designation.

In the event that the tree code is violated, each violation constitutes a separate offence. The property owner is informed of the alleged violation, the procedures, and the potential penalties. Staff investigates and determines if the violation was accidental or unintentional and remediation may include a voluntary replacement program, payment into the Canopy Replacement Fund, or payment of a fee to reimburse staff time devoted to resolving the violation. If the violation was determined to be knowing, willful and intentional then the violator must also pay at least \$500.00 and up to three times the appraised value of the tree, plus the cost of prosecution.

Tree Code Audit

The Tree Code Audit (“Audit”) identifies areas in the Code that are inconsistent with the Council charge. The following goals for the review of the Tree Code are based upon the City Council’s charge:

- Lessen the regulatory burden of the Tree Code on property owners while protecting quality of life and the wooded character of the community.
- Improve predictability in the permit process; use clear and objective code criteria.
- Reduce the time it takes to receive a permit, and the cost of administering tree regulations.
- Ensure amended regulations reflect public input, are legally sufficient, and do not conflict with other City codes and standards.

This Audit is meant as a guide to aid discussion and provide information to assist the Committee in recommending amendments to the Code. The Committee may identify additional issues or recommendations that are not covered in the Audit or that go beyond the scope identified in the Council charge.

The Audit is formatted with the existing Tree Code sections reproduced verbatim (shown in italics), followed by comment boxes.

Article 55.02 TREE REMOVAL

55.20.010 Purpose

The purpose of this chapter is to regulate the removal of trees, encourage and assist property owners in managing large forested properties, and prescribe preventative protection measures to avoid damage to trees during site development in order to preserve the wooded character of the City of Lake Oswego and to protect trees as a natural resource of the City.

Comment: The purpose section of the Tree code could be re-written to be more descriptive of the goals it is intended to achieve and to reflect the consideration of the tradeoffs of the rights of individuals against the benefits provided to the community. Both the Lake Oswego Urban and Community Forestry Plan and the proposed Natural Resources chapter of the Comprehensive Plan could be consulted in drafting the purpose statement. This would help strengthen the foundation of decisions made in the application of the Code.

Tree codes in similar jurisdictions include a brief disclaimer that the code is not intended to conflict with any Federal or State laws. Examples of potential conflicts include the Clean Water Act, the Migratory Bird Act and the Endangered Species Act. Consider adding this statement.

55.02.020 Definitions

Arborist means a person who has met the criteria for certification from the International Society of Arboriculture and maintains his or her accreditation.

Basal Area means the cross-sectional area (in square feet) of the trunk of a tree measured 54 inches (four and one-half feet) above mean ground level at the base of the trunk, calculated from the diameter at that height (DBH); basal area equals tree diameter squared, times 0.005454. This is the same as radius divided by 12, squared, times Pi (approximately 3.14159). For an explanation of how to calculate the tree diameter, see definition of "Caliper Inch" below.

Caliper Inch refers to a manner of expressing the diameter inches of a tree as calculated by measuring the tree's circumference and dividing by Pi (approximately 3.14159). Specially calibrated "diameter tapes" or "calipers" are used to determine caliper inches.

City Manager means the City Manager or the City Manager's designee.

Dead Tree means a tree is lifeless. Such evidence of lifelessness may include unseasonable lack of foliage, brittle dry branches, or lack of any growth during the growing season.

Comment: This definition is too subjective. A more objective and inclusive definition for a dead tree should be considered. The amended definition could include trees that are in a serious state of decline, but are not completely dead, such as trees that may have cavities, peeling bark, and many dead branches, but are still producing sucker growth. Currently, trees in this condition may not qualify as dead, but may be eligible as a hazard tree; however, trees in this condition are not always a hazard because they may not be close to a “target”. It should not be difficult or cumbersome to remove trees in this condition. This category could be expanded to include trees that are dead, dying, diseased, and/or damaged beyond repair.

Diameter at breast height or DBH means the diameter of the trunk, at its maximum cross section, measured 54 inches (four and one-half feet) above mean ground level at the base of the trunk.

Dripline means an imaginary vertical line extending downward from the outermost tips of a tree’s branches to the ground.

Forest Management Professional means a certified or licensed (as applicable) arborist, forester, landscape architect, forest ecologist, or similar natural resource professional, with expertise in developing silvicultural prescriptions.

Forested Tract, Large means a lot, parcel, or tract, or a portion thereof, one acre or larger in area containing not less than one acre of tree canopy or meeting the applicable stocking level for high/medium/low site class(es), as applicable, under the Oregon Forest Practices Act (OFPA). Where stocking level is used (e.g., for a forest management permit) site class is determined by a qualified forest management professional at the time of application submittal. A property may have more than one large forested tract on it, and forest land on contiguous tracts under the same ownership may be considered together in calculating the minimum area of one acre.

Invasive Tree Species means a tree species listed on the Invasive Tree Species List on file with the Planning Department. The Invasive Tree Species List shall include:

- a. Tree species listed by resolution of the City Council; and*
- b. Tree species added by the City Manager from time to time, upon finding that the tree species has been introduced to locations outside of its native range, the tree species has spread and now persists over large areas, and the tree species negatively impacts natural ecosystems by displacing native species, reducing biological diversity and interfering with natural succession.*

Person means any individual or legal entity.

Removal means to cut down a tree or remove all or 50% or more of the crown, trunk, or root system of a tree; or to damage a tree so as to cause the tree to decline and/or die. "Removal" includes but is not limited to topping, damage inflicted upon a root system by application of toxic substances, operation of equipment and vehicles, storage of materials, change of natural grade due to unapproved excavation or filling, or unapproved alteration of natural physical conditions. "Removal" does not include normal trimming or pruning of trees.

Single-family dwelling for the purpose of this chapter means any of the following: a detached home, a townhouse or row house, a zero-lot line dwelling, duplex, or a condominium unit where the tree cutting permit relates to a tree located in the private yard of such a unit.

Stocking means the number of trees on a given area, as in the case of trees per acre required to be retained or planted after removal under a forest management permit. Restocking means trees planted under a forest management permit for reforestation. Stocking counts trees of all sizes and ages, including seedlings and young trees.

Stump means a tree of six feet in height or less whose top was removed either under a tree removal permit or by an act of nature.

Topping means the severe cutting back of a tree's limbs to stubs three inches or larger in diameter within the tree's crown to such a degree so as to remove the natural canopy and disfigure the tree.

Tree means any woody plant having a trunk five caliper inches or larger in diameter at breast height (DBH), except that for purposes of restocking, "tree" means a woody perennial plant, often but not always with one dominant trunk, with the capacity to achieve a mature height greater than 16 feet, and primarily referred to in the latest edition of *Trees to Know in Oregon* (Oregon State University Extension Agency). If a tree splits into multiple trunks above ground, but below four and one-half feet, the trunk is measured at its most narrow point beneath the split, and is considered one tree. If the tree splits into multiple trunks below ground, each trunk

Comment: In order to reduce the regulatory burden on property owners, consider changing the trunk diameter threshold for a "tree" from five inches DBH to six inches DBH. This is also the minimum size at which comparable jurisdictions in the area regulate trees and was a recommendation of the 2001 Tree Code Task Force. An additional revision that would reduce the regulatory burden on property owners while meeting the intent of the Tree Code is to consider expanding the list of woody shrubs that are not considered a tree regardless of their trunk diameter. Examples of woody shrubs that could be excluded are rhododendrons and camellias. Another exclusion to consider are trees that are planted and maintained as hedges.

shall be considered one tree. For the purposes of this chapter, stumps, English laurel, Portuguese laurel, photinia, arborvitae, poison oak, and English ivy shall not be considered a "tree."

Tree Canopy means the total ground area covered by a tree or a stand of trees, as measured at the outer limit of tree branches or crown, projected to the ground. This is also referred to as the tree dripline.

Tree Cutting Permit means written authorization from the City for a tree removal to proceed as described in an application, such authorization having been given in accordance with this chapter.

Tree Protection Zone means the area reserved around a tree or group of trees in which no grading, access, stockpiling or other construction activity shall occur as determined by the City Manager to be appropriate based on review of the tree and site conditions.

55.02.025 Exempt Activities*This chapter does not apply to the removal of trees less than five inches DBH.*

Comment: If the DBH is increased to six inches, as described in the definition of "tree", above, then amend this section to six inches as well.

55.02.030 Prohibited Activities

- 1. No person shall remove a tree without first obtaining a tree cutting permit from the City pursuant to this chapter.*
- 2. No person shall top a tree without first obtaining a topping permit from the City pursuant to this chapter.*
- 3. No person who is required to install or maintain tree protection measures per LOC Article 55.08 shall do any development activities including, but not limited to clearing, grading, excavation or demolition work on a property or site which requires ministerial, minor or major development approval without approved tree protection measures properly installed and maintained pursuant to this chapter.*

Comment: Many plumbing permits and public improvement projects within the right-of-way are not considered ministerial, minor, or major developments, but may involve trenching or other construction activities that can damage trees. Currently, the City Manager does not technically have authority to require tree protection for these development activities. Adding plumbing permits that involve ground disturbance and development involving public improvements to subsection 3, above, will help protect and preserve trees in these situations by closing the current "loophole".

55.02.035 Tree Removal in Conjunction with Major and Minor Development Permits

1. *If a major or minor development permit applied for pursuant to LOC 50.07.003.15 or 50.07.003.14, respectively, would require or result in tree removal and/or a tree cutting permit as defined in this chapter, compliance with LOC 55.02.080 shall be a criterion of approval of such development permit. Tree removals in conjunction with a major or minor development permit shall be considered in conjunction with such permit and shall be subject to the application, notice, hearing and appeal procedures applicable to the proposed major or minor development pursuant to LOC 50.07.003.3.e, 50.07.003.7.a, 50.07.003.15.b, and 50.07.003.7. The required notice for major or minor developments that would require or result in tree removals shall include a site plan indicating the location of any trees proposed for removal on the subject site. The proposed trees shall also be flagged with yellow flagging tape on site. Such flagging shall be maintained until a final decision on the proposal is rendered. The remaining, notice, hearing and appeal procedures in LOC Chapter 55 shall not apply to tree removals considered in conjunction with a major or minor development request. Subsequent tree removals that have not been reviewed through either major or minor development procedures shall be reviewed as provided in this chapter.*

2. *Once a final decision has been rendered on the major or minor development permit, trees that have been approved for removal as part of that decision shall be subject to the verification permit process. Applications for verifications shall be made on the application forms as prescribed by the City Manager and be accompanied by an application fee as established by resolution of the City Council. The purpose of the verification process is to ensure that the trees approved for removal are properly identified for removal in the field and that the trees that were not approved for removal are not inadvertently removed. Removal of trees in violation of such land use approval will be considered a violation of this chapter. The criteria contained in LOC 55.02.080 shall not apply to verification applications for tree cutting permits.*

3. *If a tree proposed to be removed has been specifically required to be preserved or protected as a condition of approval of a land use action pursuant to the Lake Oswego Community Development Code, the tree removal application shall be processed as a modification to that land use action and shall be reviewed subject to the criteria of LOC 55.02.080 by the body responsible for reviewing such land use actions. Such modification procedure shall not be required in cases of an emergency as provided in LOC 55.02.042(3), or when the tree is dead as provided in LOC 55.02.080(1) or is a hazard as provided in LOC 55.02.080(2).*

Comment: No substantive changes would be necessary to this section. However, non-substantive revisions and the addition of subsections could help make the section more readable and easier to comprehend.

55.02.042 Permit Classifications and Review Procedures

A person who desires to remove a tree shall first apply for and receive one of the following tree cutting permits before tree removal occurs:

1. *Type 1 Permit is required for:*

- a. A property that is located in a residential zone and is occupied by a single-family dwelling;*
- b. Removal of up to two trees, 10-inch caliper or less per tree at DBH within a calendar year; and*
- c. A tree that is not:*
 - i. Protected by a condition of approval of a development permit pursuant to the Lake Oswego Community Development Code;*
 - ii. Located within an area or parcel that has been placed on the Historic Landmark Designation List pursuant to LOC 50.06.009;*
 - iii. A heritage tree per LOC Article 55.06;*
 - iv. Located within an RC or RP sensitive land overlay district;*
 - v. Located within the Willamette River Greenway (WRG) overlay district;*
 - vi. Located within the 25-foot Oswego Lake Special Setback;*
 - vii. Located on property owned by the City of Lake Oswego or dedicated to the public, including parks, open space and public rights-of-way.*

Type I permits shall be issued without further review upon application and demonstration by the applicant that the request qualifies as a Type I permit pursuant to this subsection.

Comment: In order to reduce the regulatory burden on property owners, consider raising the diameter of a tree that may be removed under the Type I procedure from 10” to 12” DBH, but keep the limit at two per calendar year. This was a recommendation of the 2001 Tree Code Task Force, and reflects suggestions made by the public and staff.

Based on review of other tree codes, additional changes to consider are allowing certain types or species of trees, regardless of DBH or number of trees, to also be removed as Type I. This could include certain fruit or ornamental trees and could involve a requirement to provide a picture or other documentation of the tree type/species for verification. This provision would provide more flexibility for property owners and would reduce the regulatory burden on property owners who want to remove small stature trees that don’t contribute significantly to neighborhood character. Similarly, consider whether trees that are within a certain distance from a structure (i.e. 5 feet), could qualify as a Type I regardless of size or number.

Allow Type I permits to be applied for online in order to streamline the process. This eliminates or reduces the need for property owners/applicants to make a trip to City Hall for a simple permit and reduces the amount of traffic and waiting times at the Planning counter. Although about the same amount of staff time will still be necessary to review and process a Type I permit submitted online, the process could be further improved by having Planning staff review the permit for compliance with the criteria, then turn the permit over to administrative staff (receptionist) to issue and close out the permit. This reduces the amount of time professional staff spends on simple, routine permits and allows staff to process the permits on a daily basis at one time instead of “on-demand” at the counter. This would directly address many of the comments and concerns from the public and stakeholders over the burden placed on homeowners by the process. It is important to still

2. *Type II Permit:*

a. A Type II permit is required prior to any tree removal application that does not qualify for issuance of a Type I permit, dead tree removal permit, hazard tree removal permit, emergency permit, verification permit, topping permit, invasive tree species removal permit, or forest management permit as described in this section.

b. Type II permits shall be reviewed and approved by the City Manager pursuant to LOC 55.02.080 (approval criteria) and 55.02.082 (notice requirements).

Comment: No change to this subsection are necessary. See type II approval criteria and procedures sections for comments.

3. *Dead Tree Removal Permit:*

a. The City shall issue a tree cutting permit for a dead tree, except as provided by subsection (3)(b) of this section, if the applicant demonstrates that a tree is dead and warrants removal.

b. In order to provide for wildlife habitat and natural processes, the City Manager may require the retention of a dead tree. Dead trees shall not be removed if located in wetlands, RC Protection Areas (LOC 50.05.010.5.b), stream corridors, parks or open space areas required to be preserved as a condition of development approval, unless the tree presents a potential hazard to persons or property.

Comment: Clarify that the City Manager may require all or part of the dead tree to be retained. In some cases, the tree can be topped, leaving a snag for wildlife habitat.

Allow dead tree permits to be applied for online to streamline the process.

4. *Hazard Tree Removal Permit: The City shall issue a tree cutting permit for a hazard tree if the applicant demonstrates that a tree is a hazard and warrants removal.*

a. A hazard tree is a tree that is cracked, split, leaning or physically damaged to the degree that it is clear that it is likely to fall and injure persons or property. A hazard tree may also include a tree that is located within a public right of way and is causing damage to existing public or private facilities or services and such facilities or services cannot be relocated. The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard or a foreseeable danger of property damage to an existing structure and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

b. The City may require the applicant to submit an arborist's report confirming the hazard potential of the tree along with an analysis of alternative methods to alleviate the hazard without removal, and submit a completed hazard evaluation form as provided by the City.

Comment: The definition of a hazard tree is relatively subjective. Revise the definition to be more clear and objective and assure the risk rating methodology is up to date with the International Society of Arboriculture (ISA) Best Management Practices for Tree Risk Assessment.

To reduce the regulatory burden on property owners dealing with emergency plumbing situations, consider allowing trees that are causing damage to sewer or water lines and/or interfering with the repair or replacement of these lines on private property to be removed as hazard trees. Sufficient evidence would be necessary to establish that there are no reasonable measures that could be undertaken to avoid removal of the tree.

In order to avoid the appearance of a conflict of interest, consider a requirement that the arborist preparing a hazard evaluation report cannot be associated with the company that removes the tree. Alternatively, staff could continue the current practice of having the City's contract arborist make a site visit and evaluate reports that counter staff cannot reasonably verify.

Allow hazard permits to be applied for online in order to streamline the process. This eliminates or reduces the need for property owners/applicants to make a trip to City Hall for a simple permit and reduces the amount of traffic and waiting times at the Planning counter.

5. *Emergency Permit:*

a. If the condition of a tree presents an immediate danger of collapse, and represents a clear and present hazard to persons or property, an emergency tree cutting permit may be issued and the payment of a fee may be waived. For the purposes of this subsection, "immediate danger of collapse" means that the tree is already leaning, with the surrounding soil heaving, and there is a significant likelihood that the tree will topple or otherwise fail and cause damage before a tree cutting permit could be obtained through the nonemergency process. "Immediate danger of collapse" does not include hazardous conditions that can be alleviated by pruning or treatment.

b. Emergency tree cutting permits must be approved by the City Manager. If an emergency situation arises at a time when the City Manager is unavailable, and such emergency creates a significant likelihood that the tree will topple or otherwise fail before such official becomes available, the owner of the tree shall, if practical and reasonable, first notify the City Tree Hotline phone number and state the address where the tree is being removed, the company performing the removal, along with the property owner's name, address, and telephone number. The owner shall photograph the tree showing emergency conditions and then may proceed with removal of the tree to the extent necessary to avoid the immediate hazard. Within seven days of such removal, the owner of the tree shall apply for a retroactive emergency tree cutting permit and shall submit with the application, evidence to demonstrate the emergency nature of the tree.

Comment: Revise definition to remove the requirement that the soil must be heaving as that is not always present in severely leaning trees. Also should include trees that have fallen or leaned onto structures or other trees and is being supported by those structures or trees.

Remove reference to City Tree Hotline in this code section. It does not exist. An email address can be provided in lieu of a phone number.

Allow Emergency permits to be applied for online in order to streamline the process. This eliminates the need for property owners/applicants to make a trip to City Hall to deal with an urgent issue. It also reduces the amount of traffic and waiting times at the Planning counter.

c. The City may require the application to hire an arborist to review the evidence to ascertain whether the tree presented an immediate danger of collapse. The person or entity performing the removal shall not be eligible to provide this review. If the evidence shows that the tree did not satisfy the emergency tree removal standards set forth in this chapter, the application shall be denied and the owner of the tree shall be subject to penalties pursuant to LOC 55.02.130 and the mitigation requirements of LOC 55.02.084.

6. Invasive Tree Species Removal Permit: The City may issue a tree cutting permit for a tree that is on the Invasive Tree Species List upon the applicant's compliance with the requirements of LOC 55.02.050(1)(a).

Comment: No change necessary.

Allow invasive tree species permits to be applied for online in order to streamline the process. This eliminates or reduces the need for property owners/applicants to make a trip to City Hall for a simple permit and reduces the amount of traffic and waiting times at the Planning counter.

7. *Verification Permit:*

a. If a site has received development approval through a major or minor development process, then a verification permit shall be issued for those trees approved for removal through that process. To obtain a verification permit, an applicant must clearly identify in the field the trees to be removed by tying yellow tagging tape around each tree and submitting a site plan indicating the location of the requested trees. The City Manager may require the building footprint of the development to be staked to allow for accurate verification of the permit application. The City Manager will then verify that the requested trees match the site plan approved through the major or minor development process. The City shall require the applicant to mitigate for the removal of each tree pursuant to LOC 55.02.084. Such mitigation requirements shall be a condition of approval of the original development permit.

b. Any tree not approved for removal through the original major or minor development review process shall not be approved as part of the verification permit process, unless the subject tree is located within an approved building footprint, public/private utility or improvement area, and no feasible alternative exists to preserve the tree. In such cases, the City may allow the tree to be removed without a Type II tree cutting permit process; however, the mitigation requirements of LOC 55.02.084 shall still apply.

c. Verification permits shall be issued upon application and demonstration by the applicant that the request complies with this section. Verification permits shall not be issued prior to the issuance of a building permit for the subject property without prior authorization by the City Manager.

Comment: No change necessary.

Allow verification removal permits to be applied for online in order to streamline the process. This eliminates or reduces the need for property owners/applicants to make a trip to City Hall and reduces the amount of traffic and waiting times at the Planning counter.

8. *Topping Permit:*

a. A topping permit may be issued only if the following apply:

i. A utility, public agency, or other person who routinely tops trees in furtherance of public safety, may apply for a topping permit pursuant to this section based upon an arborist or forester report establishing a methodology for topping in compliance with this subsection.

ii. Trees under utility wires may be topped only where other pruning practices are impractical.

b. *The City, in granting approval for tree removal in an open space or undeveloped area, may allow a tree to be topped to a designated height in order to maintain a "snag" for wildlife habitat.*

c. *A tree cutting permit obtained for tree removal shall not authorize topping unless said tree cutting permit specifically authorizes such action.*

Comment: This permit type is rarely if ever utilized. Utility companies often top trees without obtaining a permit and sometimes removes trees without a permit, most likely because the permit process is burdensome given the scale of pruning the utility companies must undertake. On average, the City fields relatively few complaints about tree topping or trimming in the right-of-way by utility companies (estimated five complaints per year). In the past, there was an unofficial City staff person in the Maintenance department that acted as a liaison to utility companies for tree pruning, but when that staff person left, no one took over that role. Consider revising this code section to allow utility companies to obtain a topping/pruning permit that covers entire road sections or areas and provides a streamlined process for removing trees from the right-of-way in cases where the necessary pruning would remove a significant amount of vegetation and/or severely disfigure the tree. The City could also designate a staff liaison to utility companies, as occurred in the past, in order to establish a contact that can provide consistent information and assistance.

9. *Forest Management Permit, Minor or Major: The City shall issue a permit for tree cutting on a large forested tract upon the applicant's compliance with the requirements of LOC 55.02.072.*

Comment: No change necessary. This permit type was added in the spring of 2015 and no one has applied for this permit yet.

55.02.050 *Application for Permits*

1. *An application for a tree cutting permit shall be made upon forms prescribed by the City.*

a. *Invasive Tree Species Removal Permit. An application for an invasive tree species removal permit shall contain:*

i. *Photograph(s) that positively identify the tree species;*

ii. *The number, DBH, species, and location of the trees proposed to be cut on a site plan of the property. For large forested tracts, the City Manager may accept an estimate of the number of invasive trees to be removed with a site plan indicating the estimated number, location, DBH, and species;*

iii. Information as to whether the tree is located in a public right-of-way, is within a Resource Conservation or Resource Protection Overlay District, or is part of an approved landscape or mitigation plan;

iv. A mitigation plan, if required pursuant to LOC 55.02.084(1), with information showing proposed planting of any new trees to replace the invasive trees to be removed; and

v. Any other information reasonably required by the City.

b. *Other Tree Removal Permits.* An application for a tree cutting permit that is not for an invasive tree species removal permit shall contain:

i. The number, DBH, species and location of the trees proposed to be cut on a site plan of the property, except as provided for a major forest management permit application under LOC 55.02.072(4);

ii. A forest management plan, where an application is for a major forest management permit under LOC 55.02.072(4). The application shall provide an estimate of current and proposed stocking levels (number and basal area) of trees five inches or greater DBH by general categories of trees (e.g., Evergreen-Conifer, Evergreen-Broadleaf, Deciduous, etc.), and identify the names of the predominate tree species representing each category;

iii. The anticipated date(s) of removal (starting and stopping dates);

iv. A statement of the reason(s) for removal;

v. A mitigation plan, if required pursuant to LOC 55.02.084(1), with information showing any proposed landscaping, planting, or, in the case of large forested tracts, restocking of any new trees to replace the trees to be removed; and

vi. Any other information reasonably required by the City.

2. The applicant shall have the burden of proving that his or her application complies with the criteria for approval of the applicable class of permit.

3. Misrepresentation of any fact necessary for the City's determination for granting a tree cutting permit shall invalidate the permit. The City may at any time, including after a removal has occurred, independently verify facts related to a tree removal request and, if found to be false or misleading, may invalidate the permit and process the removal as a violation. Such misrepresentation may relate to matters including, without limitation, tree size, location, health or hazard condition, and owner's authorized signature.

Comment: Remove the requirement that all permit types provide the anticipated dates of removal, except for forest management permits. This has never been consistently required and is not relevant to the criteria. In addition, few property owners know the exact date of removal at the time of application because they do not want to schedule removal until they have first obtained the permit.

55.02.060 Fees

An application for a tree cutting permit shall be accompanied by a filing fee as established by resolution of the City Council.

Comment: No change necessary. Fees are not included in the Tree Code, but are established by the City Council and included in the City's Master Fee Schedule. The Committee may review the fees associated with tree removal and make recommendations to the Council to amend the fee schedule.

55.02.072 Forest Management Permit

1. Purpose. The criteria for approval of forest management permits are intended to sustain forest cover and health, and assist property owners in managing forested properties, while minimizing the risk of catastrophic events such as wildfire, drought, pest and disease infestations, storms (tree blow-down), and landslides. In addition, large forested tracts can provide thermal comfort and energy conservation (where stands of trees provide summer shade and windbreaks); water quality (through reduced storm water runoff and erosion); air quality; noise reduction (e.g., in areas of dense trees and shrubs); wildlife and biodiversity; income for property owners; and aesthetics, which can contribute positively to community identity, real estate values, commerce, recreation, and individual health and well-being.

2. Applicability. An owner of a large forested tract or the owner's authorized agent may apply for removal of one or more trees from the subject tract provided the tract is not subject to a pending application for minor or major development, and the subject trees are not:

a. Protected by a condition of approval of a development permit pursuant to the Lake Oswego Community Development Code (LOC Chapter 50);

b. Located on a property that has been placed on the Historic Landmark Designation List pursuant to LOC 50.06.009;

c. A heritage tree per LOC Article 55.06;

d. Located within a Resource Conservation Overlay District or a Resource Protection Overlay District;

- e. *Located within the Greenway Management (GM) overlay district (LOC 50.05.009); or*
- f. *Located within the 25-foot Oswego Lake Special Setback (LOC 50.04.002).*

3. *Minor Forest Management Permit. An owner of a large forested tract or the owner's authorized agent may apply for a minor forest management permit to remove trees under the following criteria:*

a. *Removal of up to six trees or four square feet of basal area, whichever is greater, within one calendar year for every one acre (43,560 sq. ft.) of a large forested tract (round to the closest whole number of trees).*

b. *Removal of any number of trees that meet the criteria in LOC 55.02.042 for a dead tree removal permit, hazard tree removal permit, emergency permit, topping permit, or invasive tree species removal permit may be combined in one minor forest management permit. The City Manager may require a report from a qualified forest management professional to substantiate that the respective criteria are met.*

c. *Soil, felled trees, and debris shall be contained within the subject tract; forest management activities shall not cause erosion or alter the flow of surface waters onto an adjacent property. An erosion control permit approved by the City Manager pursuant to LOC Chapter 52 is required prior to tree removal activities that disturb 500 square feet or more of land surface area, or any land area within 50 feet of a stream corridor boundary.*

Minor forest management permits shall be issued without further review upon application and demonstration by the applicant that the request qualifies as a minor forest management permit pursuant to this subsection.

4. *Major Forest Management Permit (Forest Management Plan). An owner of a large forested tract or the owner's authorized agent may apply for a major forest management permit to remove more trees than would be permitted under a minor forest management permit. An application for a major forest management permit shall be accompanied by a forest management plan prepared by a qualified forest management professional, which shall be reviewed and approved by the City Manager pursuant to the notification requirements in LOC 55.02.082 and the following criteria:*

a. *The forest management plan shall include a description of the existing conditions and identify and describe the forest management objectives that it is intended to implement for each tree stand type proposed for treatment. Forest management objectives include pest management; disease prevention and treatment; protection against catastrophic events, such as wildfire and storms (tree blow-down); removal of individual hazard trees; water quality protection or improvement; removal of invasive species; and routine pruning, thinning, and replanting of trees for forest health and diversity;*

b. *Forest management shall not include the felling and removal of all trees from a stand (clearcutting), except where a stand is predominately comprised of diseased trees,*

treatment by other means is not practicable, and the forest management plan provides for restocking with non-susceptible species;

c. Forest management activities will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks;

d. Forest management activities will not result in removal of more than 50% of the basal area of trees within a required setback yard under the applicable zoning district (LOC Chapter 50). The reviewing authority may grant an exception to this criterion when alternatives to tree removal have been considered and no reasonable alternative exists but to allow the proposed forest management activities. In making this determination, the reviewing authority shall consider the advice of a qualified forest management professional;

e. Removal of the tree(s) is not for the sole purpose of providing or enhancing views. Thinning and pruning of trees to provide a fuel break next to an existing dwelling is allowed subject to compliance with the criteria of this section;

f. The application shall contain a forest management plan (narrative and site plan) that:

i. Identifies all proposed areas of tree removal, stocking, and other forest practices, as applicable;

ii. Identifies all proposed forest management activities, including timing, duration, method of application (e.g., manual or equipment), temporary and permanent disturbance areas (e.g., any roads, stockpiles, etc.), and, where applicable, erosion control measures under LOC Chapter 52;

iii. Describes how existing trees to be retained, including trees not in the area to be thinned, and those on abutting property, will be protected during all proposed forest management activities;

iv. Demonstrates how any adverse impacts, per subsections (4)(c) and (4)(d) of this section, will be avoided; or, where impacts are unavoidable, how they will be minimized or mitigated;

v. Provides silvicultural prescriptions and maintains site-appropriate stocking levels as recommended by a qualified forest management professional, to achieve the stated forest management objectives. The reviewing authority may refer to the Oregon Forest Practices Act for guidance on recommended stocking levels, as applicable; and

vi. *Preserves exemplary specimen trees for their aesthetic or educational value where preservation does not conflict with the proposed forest management objectives.*

Comment: No change necessary. This permit type was added in the spring of 2015 and no one has applied for this permit yet.

55.02.080 *Criteria for Issuance of Type II Tree Cutting Permits*

An applicant for a Type II tree cutting permit shall demonstrate that the following criteria are satisfied. The City Manager may require an arborist's report to substantiate the criteria for a permit.

- 1. The tree is proposed for removal for landscaping purposes or in order to construct development approved or allowed pursuant to the Lake Oswego Code or other applicable development regulations. The City Manager may require the building footprint of the development to be staked to allow for accurate verification of the permit application;*
- 2. Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks; and*

Comment: This criterion is too subjective. While it may not be possible to revise this criterion to be 100% objective, the Hillside Protection and Drainage standards in LOC 50.06.006.2 and 3 could be helpful in formulating more objective criteria.

The Drainage standard is in the process of being updated by the City. Draft Tree Code concepts and amendments will be reviewed by the Engineering staff to assure consistency with the revised Drainage standards.

3. Removal of the tree will not have a significant negative impact on the character, aesthetics, or property values of the neighborhood. The City may grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone. In making this determination, the City may consider alternative site plans or placement of structures or alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with other provisions of the Lake Oswego Code.

4. Removal of the tree is not for the sole purpose of providing or enhancing views.

5. *The City shall require the applicant to mitigate for the removal of each tree pursuant to LOC 55.02.084. Such mitigation requirements shall be a condition of approval of the permit.*

Comment: The type II criteria are very subjective. This is commonly accepted as one of the primary problems with the current Code. In order to increase objectivity and predictability for both property owners and neighbors, consider revising in order to establish easily identified and defined characteristics that will be used to determine if a permit will be issued. Once the defining characteristics are established the means of measurements or calculations should be explained. Finally, the thresholds for approval and denial should be indicated in order to avoid subjective enforcement.

Examples of potential defining characteristics:

- Size/species (with specific guidelines for determination)
- Health and soundness of tree structure
- Relationship to larger groups of trees (e.g. wind block, thinning),
- Slope of location, potential consideration of soil type (e.g. erosion)
- Property characteristics (e.g. tree acts as a privacy barrier, excessive shade)
- Potential to cause damage to buildings and/or infrastructure

55.02.082 *Staff Decision and Notice Requirements for Type II Permits and Major Forest Management Permits*

1. *An applicant for a Type II tree cutting permit or a major forest management permit shall:*
 - a. *Complete a written notice form to be mailed by the City via regular mail to the neighborhood association whose boundaries include the proposed tree removal site;*
 - b. *Complete a written certification that the property will be posted and the trees will be marked pursuant to this section;*
 - c. *Within 24 hours of applying for a tree cutting permit, post a public notice sign of a pending tree cutting permit as provided by the City on the subject property in a location which is clearly visible and readable to vehicles traveling on a public street and to pedestrians walking or biking by the property. The public notice sign shall state that a tree cutting permit is pending for trees on the property marked by yellow plastic tagging tape (or other means approved by the City, in the case of forest management permits), include the date of posting and the pending permit number as assigned by the City Manager, and state that City staff will consider any comments on the pending permit that are received within 14 days of the date of posting. For pending forest management permits, the notice*

shall include a brief summary of the proposed tree removal and forest management activities;

d. Mark each tree proposed to be removed by tying or attaching a yellow plastic tagging tape to the tree at four and one-half feet above mean ground level at the base of the trunk, on or prior to the same day that the property is posted. For tree removal under a forest management permit, trees may be identified with tree marking paint, flagging, or other methods recommended by a forest management professional and identified in the permit; and

e. Maintain the posting and marking for 14 consecutive days following the posting of the property.

2. Within two business days of the close of the 14-day comment period, City staff shall make a tentative decision approving the permit or shall deny the permit.

3. If a permit is tentatively approved, staff shall immediately post a yellow sign stating the tentative approval and also stating the method and deadline for requesting the hearing pursuant to LOC 55.02.085. The applicant shall maintain the posting of this sign, together with the tree marking, for at least 14 consecutive days. If no request for a hearing is received meeting the requirements of LOC 55.02.085, the approval of the permit shall be final.

4. If the applicant appeals the denial of a permit, or appeals conditions imposed on a tentatively approved permit, City staff shall immediately post a red sign stating the appeal, and the time and date of the appeal hearing. The applicant shall maintain the posting of this sign and the tree marking, until the date of the hearing.

5. Failure to install or maintain the required notice and marking may result in denial or delay in issuance of the permit or revocation of an approved permit.

Comment: The notice requirement for type II permits is another primary issues identified by stakeholder input. The current review process takes a month and involves two site visits by staff. Many of the comments we received at the Urban Forestry Summit and the focus groups held in the spring were that the process is burdensome for applicants and involves a significant amount of staff time to administer.

In order to reduce both the burden on property owners and the cost of administration, consider reducing the notice period from one month to two weeks (also a recommendation of the 2001 Tree Task Force), requiring only one sign to be posted at the site, and allowing the written notice to the designated contact at the neighborhood association to be emailed rather than mailed via regular mail. The notice sign should clearly state the procedure and deadline for submitting comments and/or appealing the decision.

55.02.084 Mitigation Required

1. *An applicant shall provide mitigation for any tree permitted for removal, with the exception of the following:*

- a. Dead trees;*
- b. Hazard trees;*
- c. Trees that are ten inches or less in diameter removed from developed single-family lot;*
- d. Invasive tree species, except as provided in subsection (2) of this section;*
- e. Tree removal under an approved minor forest management permit pursuant to LOC 55.02.072; restocking may be required for major forest management permit under LOC 55.02.072(4).*

2. *Mitigation for invasive tree species removal is required when:*

- a. The removal is from a public right-of-way;*
- b. The removal is from a Resource Conservation or Resource Protection Overlay District; or*
- c. The tree was planted as part of a previously approved landscape or mitigation plan.*

3. *The mitigation requirement shall be satisfied as follows:*

- a. Replanting on Site. The applicant shall plant, for each tree removed:*
 - i. Invasive Tree Species Removal Permit: Removal from a public right-of-way or from an approved landscape plan, either a minimum two-inch caliper deciduous tree or a six- to eight-foot-tall evergreen tree for each tree removed. Removal from a Resource Conservation or Resource Protection Overlay District, either a minimum one-half-inch caliper deciduous tree or a minimum two-foot-tall evergreen tree.*
 - ii. Other Tree Cutting Permits: Either a minimum two-inch caliper deciduous tree or a six- to eight-foot-tall evergreen tree for each tree removed.*

The tree shall be planted according to the specifications in the City Tree Planting and Maintenance Guidelines as approved by the City Council.

- b. Replanting off Site. If in the City's determination there is insufficient available space on the subject property, the replanting required in subsection (1) of this section shall occur on other property in the applicant's ownership or control within the City, in an open space tract that is part of the same subdivision, or in a City-owned or dedicated open space or park. Such mitigation planting is subject to the approval of the authorized property*

owners. If planting on City-owned or dedicated property, the City may specify the species and size of the tree. Nothing in this section shall be construed as an obligation of the City to allow trees to be planted on City-owned or dedicated property.

c. *Payment in Lieu of Planting.* If in the City's determination no feasible alternative exists to plant the required mitigation, the applicant shall pay into the tree fund an amount as established by resolution of the City Council.

4. *Trees identified as invasive on the Invasive Tree Species List are prohibited as mitigation trees.*

Comment: To provide more flexibility to property owners, and because smaller caliper trees are more widely available and have a better survival rate, consider reducing the required size of mitigation trees from 2 inches to 1.5 inches (also a recommendation of the 2001 Tree Code Task Force).

Based on public input, consider eliminating mitigation requirements for removal of invasive trees, offering extra credit towards mitigation requirements when native trees are planted, and providing mitigation credit when invasive species, such as ivy, are removed.

Consider more flexibility or options to waive or reduce mitigation requirements on heavily treed lots or large campuses. For instance, not requiring mitigation if the percentage of canopy coverage on the site exceeds a certain amount, or allowing a more flexible payment-in-lieu of mitigation option.

Issue guidelines and/or educational materials for planting mitigation trees.

Consider requiring native trees to be planted as mitigation when native trees are approved for removal, and requiring mitigation above 1:1 when larger trees are removed.

Consider providing mitigation credit for recently planted trees.

Consider reducing the size of mitigation trees planted in Sensitive Lands areas to increase survival rate. This is currently allowed for mitigation in Sensitive Lands for invasive tree removal.

Emergency tree permits technically require mitigation, but dead or hazardous trees don't. Make requirement consistent for all three permit types.

55.02.085 Request for Public Hearing on a Type II Tree Cutting Permit

1. Any person may request a hearing on a Type II tree cutting permit by filing a written request for hearing, along with the applicable hearing fee as established by resolution of the City Council, with the City Recorder, within 14 days of the date the notice of tentative decision was posted pursuant to LOC 55.02.082. Failure to file within the 14-day period shall preclude such a request.
2. An applicant for a tree cutting permit may appeal denial of a permit or conditions imposed on an approved permit by filing a written notice of intent to appeal, along with the applicable filing fee as established by resolution of the City Council, with the City Recorder within 14 days of the date of decision on the permit.
3. Requests for hearing and appeals shall be heard by the Development Review Commission (DRC), which shall hold a public hearing on the request or appeal. The City shall send written notice of the hearing to the applicant, the person requesting the hearing if different from the applicant, and to the recognized neighborhood association for the area in which the subject property is located. The written notice shall be sent at least 10 days in advance of the hearing.
4. The DRC shall hear testimony from the applicant, followed by those in favor of the application, those opposed to the application (beginning with the person who requested the hearing if different from the applicant), and concluding with rebuttal by the applicant. Any person may testify before the DRC. Following the close of the public testimony, the DRC shall determine, based upon the evidence and testimony in the record, whether or not the application complies with the criteria contained in LOC 55.02.080. The findings, conclusions, and order shall contain the DRC's reasons for approving, denying or modifying the permit.
5. A decision of the DRC shall not become final for 10 days from the date of adoption of written findings. Any person who appeared before the DRC either orally or in writing may appeal the decision of the DRC to the City Council by filing a written notice of intent to appeal, along with an appeal fee as established by resolution of the Council, with the City Recorder within 10 days of the date of adoption of the DRC's written findings, conclusions and order. The findings, conclusions, and order and minutes of the DRC's meeting, along with any written staff reports or testimony, shall be forwarded to the City Council. Written notice of the appeal hearing shall be sent at least 10 days in advance of the Council hearing to those persons who appeared before the DRC. The hearing before the City Council shall be on the record established before the DRC and only persons who appeared before the DRC orally or in writing may testify. The appellant shall testify first, followed by persons in favor of the appeal, persons in opposition to the appeal

Comment: Revise the procedure for requesting a hearing in this section in accordance with any changes made for the notice requirements for type II. No changes are necessary to the subsections covering the hearing body and conduct of the hearing.

(beginning with the applicant if different from the appellant), and concluding with rebuttal by the appellant. The Council's hearing and decision shall otherwise comply with subsection (4) of this section. The decision of the Council shall be final.

55.02.092 Expiration of Tree Cutting Permits

1. *An invasive tree species removal permit shall have no expiration date.*
2. *A properly issued tree cutting permit, other than an invasive tree species removal permit and forest management permit, shall remain valid for no more than 60 days from the date of issuance or date of final decision by a hearing body, if applicable. A 60-day extension shall be automatically granted by the City Manager if requested in writing before the expiration of the permit. No additional extensions beyond the first extension shall be granted. Permits that have lapsed are deemed void. Trees removed after a tree cutting permit has expired shall be considered a violation of this chapter.*
3. *A minor forest management permit shall remain valid for no more than 180 days from the date of issuance.*
4. *A major forest management permit shall remain valid for the period specified by the approved forest management plan, except as required under subsection (5) of this section.*
5. *Minor and major forest management permits automatically expire upon approval of an application for a land division or development on the tract subject to forest management activities such that the tract would no longer meet the criteria for a large forested tract.*

<p>Comment: Consider extending the expiration date of Topping/Pruning permits for utility companies if changes to that permit type are made. No other changes are necessary.</p>

55.02.094 Conditions of Approval for Tree Cutting Permits

1. *The City may impose conditions of approval on any tree cutting permit if the condition is reasonably related to preventing, eliminating or mitigating a negative impact or potential impact on natural features or processes or on the built environment of the neighborhood which is as created or contributed to by the approved tree removal.*
2. *Conditions of approval may include, but are not limited to:*
 - a. *Cutting a tree or stump flush with the grade instead of grinding or fully removing a stump;*
 - b. *Requiring modifications in the location, design or intensity of a development or activities on a site or to require or prohibit certain construction methods;*

- c. *Requiring vegetation not requiring a tree removal permit to remain in place or be planted;*
- d. *Requiring the removal of injurious vegetation (English Ivy) from other trees on the property.*

Comment: No changes are necessary.

55.02.125 Evidence of Violation

- 1. *If a tree is removed without a tree cutting permit, a violation shall be determined by measuring the stump. A stump that is seven caliper inches or more in diameter shall be considered prima facie evidence of a violation of this chapter.*
- 2. *Removal of the stump of a tree removed without a tree cutting permit prior to the determination provided in subsection (1) of this section is a violation of this chapter.*
- 3. *Proof of violation of this chapter shall be deemed prima facie evidence that such violation is that of the owner of the property upon which the violation was committed. Prosecution of or failure to prosecute the owner shall not be deemed to relieve any other responsible person.*
- 4. *Tree removal or topping caused by natural weather conditions shall not be deemed a violation of this chapter and shall be exempt from all penalties set forth in LOC 55.02.130.*

Comment: No changes are necessary.

55.02.130 Penalties

- 1. **Civil Violation.** A violation of any provision of this chapter, or the breach of any condition of a permit granted under this chapter shall be a civil violation as defined by LOC 34.04.105, enforceable pursuant to LOC Article 34.04. The unlawful removal of each individual tree shall be a separate offense hereunder. Failure to comply with the provisions of this chapter or a condition of approval shall be a separate offense each day the failure to comply continues. The violation shall be punishable by a fine set forth by the municipal court and the enforcement fee and restoration requirements as set forth in LOC 55.02.130(3) and (4).
- 2. **Nuisance Abatement.** The removal of a tree in violation of this chapter is hereby declared to be a public nuisance, and may be abated by appropriate proceedings pursuant to LOC Article 34.08.
- 3. **Enforcement Fee.** A person who removes a tree without first obtaining a tree cutting permit from the City pursuant to this chapter, removes a tree in violation of an approved tree

cutting permit, or violates a condition of an approved tree cutting permit shall pay an enforcement fee to the City in an amount as established by resolution of the City Council.

4. Restoration.

a. A person who removes a tree without first obtaining a required tree cutting permit from the City pursuant to this chapter, removes a tree in violation of an approved tree cutting permit, or violates a condition of such a permit shall pay into the City's tree fund a standard fee per caliper inch for the total number of caliper inches of the tree removed in violation of this chapter in an amount as established by resolution of the City Council.

b. The City may require the person to pay into the City's tree fund an increased fee per caliper inch for the total number of caliper inches of the tree removed in violation of this chapter in an amount as established by resolution of the City Council or the value of the tree as determined by an arborist in accordance with the methods set forth in the "Guide for Plant Appraisal," an official publication of the International Society of Arboriculture, whichever is greater, if any of the following apply:

- i. The person has committed a previous violation of a provision of this chapter, or
- ii. Tree protection measures as required by LOC Article 55.08 were not installed or maintained, or
- iii. The tree removed was any of the following:
 - (A) Thirty-six caliper inches in diameter or greater,
 - (B) A heritage tree, per LOC Article 55.06,
 - (C) Expressly protected or required to be preserved as a condition of approval of a development permit pursuant to the Lake Oswego Community Development Code,
 - (D) Located within the Willamette River Greenway per LOC 50.05.009,
 - (E) Part of a Resource Conservation (RC) or Resource Protection (RP) area, per LOC 50.05.010,
 - (F) Located on public right-of-way, City-owned or dedicated property, a public or private open space area or conservation easement.

5. Injunction. Upon request of the City Manager or direction from Council, the City Attorney may institute appropriate action in any court to enjoin the removal of trees in violation of this chapter.

6. Loss of City Privileges.

a. A person hired to perform tree removal within the City, upon request shall provide evidence to the City Manager that he or she possess a valid license to conduct business in Lake Oswego. The person is subject to business license revocation pursuant to LOC 20.02.085 if the person violates any provision of this chapter.

b. Any arborist, builder, landscaper, contractor, or tree service that has performed any tree removal in violation of this chapter or submitted a falsified report for the criteria required in this chapter, shall not be considered a responsible bidder for any City contracts for a period of two years from the date of violation or report.

7. Arborist Report and Required Treatment. Upon request by the City, a person who violates any provision of this chapter shall submit a report prepared by an arborist or qualified forest management professional, as applicable, to evaluate the damage to a tree and/or make recommendations to remedy the violation. The City upon evaluating these recommendations may, at the City's discretion, require that the recommended measures be implemented.

8. Cumulative Remedies. The rights, remedies, and penalties provided in this chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law.

Comment: No changes are necessary. Enforcement fees are established by the City Council and are included in the City's Master Fee Schedule. The Committee may make recommendations to the City Council on changes to enforcement fees in the Fee Schedule.

55.06 HERITAGE TREES

55.06.010 Purpose; Definition.

- 1. The purpose of LOC Article 55.06 is to recognize, foster appreciation and provide for voluntary protection of Heritage Trees.*
- 2. For the purpose of this Article, a "Heritage Tree" is a tree or stand of trees that is of landmark importance due to age, size, species, horticultural quality or historic importance.*

55.06.020 Nomination.

- 1. Any person may nominate a particular tree or trees as a Heritage Tree. If the proposed Heritage Tree is located on property other than City property or public right-of-way under City or County jurisdiction, the nomination shall be submitted by the property owner or accompanied by the property owner's written consent. If the proposed Heritage Tree is located on City property or public right-of-way under City or County jurisdiction, the nomination shall be submitted to the City Manager or County Administrator, as appropriate; if the nomination is consented to by the City or County, the City Manager or County Administrator shall submit the nomination to the Natural Resources Advisory Board (NRAB) pursuant to LOC 55.06.030.*

2. *Nomination shall be made on such form as required by the City Manager. The nomination form shall include a narrative explaining why the tree qualifies for Heritage Tree status pursuant to the description in LOC 55.06.010 and the written consent of the property owner as described in subsection (1) of this section.*

55.06.030 Review Process.

1. *The NRAB shall review all Heritage Trees nominations at a public meeting. Notice of the meeting shall be provided to the nominating applicant, the property owner (unless the nominated tree is located on public right-of-way under City or County jurisdiction, in which event notice shall be given to the respective City Manager or County Administrator) and the Chair of any recognized neighborhood association in which the tree is located.*

2. *Staff shall prepare a report for the NRAB analyzing whether the tree complies with the requirements for designation.*

3. *After considering the staff report and any testimony by interested persons, the NRAB shall vote on the nomination. The NRAB may designate a tree as a Heritage Tree if the Board determines that the following criteria are met:*

a. The tree or stand of trees is of landmark importance due to age, size, species, horticultural quality or historic importance; and

b. The tree is not irreparably damaged, diseased, hazardous or unsafe, or the applicant is willing to have the tree treated by an arborist and the treatment will alleviate the damage, disease or hazard;

4. *Following approval of the nomination by the NRAB:*

a. If the tree is located on private property, the designation shall be complete upon the Property Owner's execution of a covenant running with the land suitable for recordation by the City. The covenant shall describe the subject property, generally describe the location of the heritage tree, and covenant that the tree is protected as a "Heritage Tree" by the City of Lake Oswego and is therefore subject to special protection as provided in LOC Chapter 55.

b. If the tree is located on public right-of-way, the designation shall be complete upon the Staff's listing of the tree on the City Heritage Tree records.

5. *If the tree is located on the public right-of-way, the City or County, as appropriate, shall condition any future Property Owner-requested vacation of the public right-of-way upon the execution of a covenant in accordance with section (4) above, which shall be recorded by the City upon the vacation of the right-of-way.*

55.06.040 Protection of Heritage Trees.

1. *Unless the tree qualifies for a dead or hazard tree removal permit, a permit to remove a designated Heritage Tree shall be processed as a Type II Tree Removal Permit subject to the criteria contained in LOC 55.02.080, as modified by subsection (2) of this section.*

2. *If an application to remove a Heritage Tree is sought pursuant to LOC 55.02.080 the applicant shall demonstrate that the burden imposed on the property owner, or, if the tree is located within the public right-of-way under City or County jurisdiction, then the burden imposed on the respective City or County by the continued presence of the tree outweighs the public benefit provided by the tree in order to comply with 55.02.080 (3). For the purposes of making this determination, the following tree impacts shall not be considered unreasonable burdens on the property owner, or if appropriate, the City or County:*

- a. View obstruction;*
- b. Routine pruning, leaf raking and other maintenance activities; and*
- c. Infrastructure impacts or tree hazards that can be controlled or avoided by appropriate pruning or maintenance.*

3. *Unless the permit is to remove a dead or hazard tree pursuant to LOC 55.02.042 (3) or (4), the applicant to remove a heritage tree shall be required to mitigate for the loss of the tree pursuant to LOC 55.02.084.*

4. *Any person who removes a Heritage Tree in violation of LOC Article 55.06 shall be subject to the penalties provided in LOC 55.02.130. In addition, the violator shall be subject to double the enforcement fee established pursuant to LOC 55.02.130(3).*

55.06.050 Recognition of Heritage Trees.

1. *A Heritage Tree plaque shall be designed and may be furnished by the City to the property owner, or if the tree is in the public right-of-way, to the appropriate City or County official, of a designated Heritage Tree. The City may charge a fee to cover the costs of the providing the plaque. The plaque shall be posted at a location at or near the tree and, if feasible, visible from a public right-of-way.*

2. *The Planning Department shall maintain a list and map of designated Heritage Trees.*

55.06.060 Removal of Heritage Tree Designation.

A Heritage Tree shall be removed from designation if it dies or is removed pursuant to LOC 55.06.040. If removed from private property, the City shall record a document extinguishing the covenant.

Comment: No changes to the Heritage Tree code section are necessary. Explore incentives to encourage property owners to nominate heritage trees that incur no or minimal costs to the City. For example, working with tree companies that are willing to provide maintenance for heritage trees free of charge.

55.08 TREE PROTECTION

55.08.010 Applicability

This article is applicable to any ministerial, minor, or major development.

Comment: Make this article applicable to plumbing permits that involve ground disturbance and development involving public improvements (see discussion under 55.02.030, above).

55.08.020 Tree Protection Plan Required

1. *A Tree Protection Plan approved by the City Manager shall be required prior to conducting any development activities including, but not limited to clearing, grading, excavation, or demolition work on a property or site, which requires ministerial, minor, or major development approval.*
2. *In order to obtain approval of a Tree Protection Plan; an applicant shall submit a plan to the City, which clearly depicts all trees to be preserved on the site. The plan must be drawn to scale and include the following:*
 - a. *Location, species, and diameter of each tree on site and within 15 feet of the site;*
 - b. *Location of the drip line of each tree;*
 - c. *Location of existing and proposed roads, water, sanitary and storm sewer, irrigation, and other utility lines/facilities and easements;*
 - d. *Location of dry wells and soakage trenches;*
 - e. *Location of proposed and existing structures;*
 - f. *Grade change or cut and fill during or after construction;*
 - g. *Existing and proposed impervious surfaces;*

h. Identification of a contact person and/or arborist who will be responsible for implementing and maintaining the approved tree protection plan; and

i. Location and type of tree protection measures to be installed per LOC 55.08.030.

3. For minor or major development, the Tree Preservation Plan shall be prepared by an arborist and shall include an inventory of all trees on site, their health or hazard condition, and recommendations for treatment for each tree.

Comment: No changes are necessary.

55.08.030 Tree Protection Measures Required

1. Except as otherwise determined by the City Manager, all required tree protection measures set forth in this section shall be instituted prior to any development activities, including, but not limited to clearing, grading, excavation or demolition work, and shall be removed only after completion of all construction activity, including landscaping and irrigation installation.

2. Chain link fencing, a minimum of 6 feet tall with steel posts placed no farther than ten feet apart, shall be installed at the edge of the tree protection zone or dripline, whichever is greater, and at the boundary of any open space tracts or conservation easements that abut the parcel being developed.

3. The fencing shall be flush with the initial undisturbed grade.

4. Approved signs shall be attached to the chain link fencing stating that inside the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the City Manager and arborist for the project.

5. No construction activity shall occur within the tree protection zone, including, but not limited to dumping or storage of materials such as building supplies, soil, waste items, or parked vehicles or equipment.

6. The tree protection zone shall remain free of chemically injurious materials and liquids such as paints, thinners, cleaning solutions, petroleum products, and concrete or dry wall excess, construction debris, or run-off.

7. *No excavation, trenching, grading, root pruning or other activity shall occur within the tree protection zone unless directed by an arborist present on site and approved by the City Manager.*

Comment: Consider allowing other rigid metal fencing besides chain link and reducing the height of fencing to at least four feet. These changes provide more flexibility without reducing the effectiveness of the protection fencing.

Ensure that trees that are required to be preserved are of good health and suitable for protection.

Require oversight of construction work undertaken beneath the dripline of protected trees.

Require contractors and subcontractors to provide written acknowledgement of required protection measures.

55.08.040 Inspection

The applicant shall not proceed with any construction activity, except installation of erosion control measures, until the City has inspected and approved the installation of the required tree protection measures and a building and/or grading permit has been issued by the City.

Comment: Consider requiring the applicant to provide status reports prepared by the project arborist on tree protection measures at intervals throughout the project. This provision would address the issue of tree protection measures being damaged or moved after the initial inspection by the City and would not increase staff time. Another option is to require the applicant to post a bond for the tree protection, which would not be released until two years after construction to assure the survival of the trees.