

**ORDINANCE NO. 2664**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE OSWEGO AMENDING LOC 55.02 TO ADDRESS FOREST MANAGEMENT ON LARGE TRACTS OF LAND, BOTH PRIVATE AND PUBLIC (PP 14-0005).**

WHEREAS, the City Council initiated a request to amend LOC 55 Tree Code, which regulates tree removal; and

WHEREAS, the proposed amendment is consistent with the City Council goal to amend the tree code to more appropriately address large land parcels, both private and public, for forest management; and

WHEREAS, sound forest management sustains tree cover and health, and protects public safety and welfare by minimizing the risk of catastrophic events such as wildfire, drought, pest and disease infestations, storms (tree blow-down), and landslides.

WHEREAS, well managed urban forests can contribute positively to community identity, real estate values, commerce, recreation, and individual health and well-being.

WHEREAS, the City received input on the proposed code amendment from Lake Oswego residents with expertise in land planning, arboriculture, and forest management; and

WHEREAS, at its regular meeting on February 4, 2015, the City's Natural Resources Advisory Board reviewed the proposed amendment and unanimously approved a motion supporting the proposal; and

WHEREAS, notice of the public hearings relating to consideration of this Ordinance was duly given in the manner required by law; and

WHEREAS, a public hearing was held before the City Council of the City of Lake Oswego on March 17, 2015, at which the staff report, testimony, and evidence were received and considered;

The City of Lake Oswego ordains as follows:

**Section 1.** The Lake Oswego Code, Chapter 55 (Tree Code) is hereby amended by deleting the text shown by ~~striketrough~~ type and adding new text shown in **double underlined type**, attached as Exhibit 1. (Sections or subsections within the LOC that are omitted and not marked for deletion or addition are neither amended nor deleted by this Ordinance.)

**Section 2.** Severability. The provisions of this ordinance are severable. If any portion of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Read by title and enacted at the regular meeting of the City Council of the City of Lake Oswego held on the 17<sup>th</sup> day of March, 2015.

AYES:

NOES:

ABSTAIN:

EXCUSED:

\_\_\_\_\_  
Kent Studebaker, Mayor

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Catherine Schneider, City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
David D. Powell, City Attorney

**Article 55.02  
Tree Removal**

Sections:

55.02.010 Purpose.

55.02.020 Definitions. Revised 12/11

**55.02.025 Exempt Activities**

55.02.030 Prohibited Activities.

55.02.035 Tree Removal in Conjunction with Major or Minor Development Permit. Revised 4/12

55.02.042 Permit Classifications and Review Procedures. Revised 12/11 Revised 4/12

55.02.050 Application for Permits. Revised 12/11

55.02.060 Fees.

**55.02.070 Forest Management Permit.**

55.02.080 Criteria for Issuance of Type II Tree Cutting Permits.

55.02.082 Staff Decision and Notice Requirements for Type II Permits.

55.02.084 Mitigation Required. Revised 12/11

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

55.02.092 Expiration of Tree Cutting Permits. Revised 12/11

55.02.094 Conditions of Approval for Tree Cutting Permits.

55.02.125 Evidence of Violation.

55.02.130 Penalties. Revised 12/11 Revised 4/12

**55.02.010 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.

**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 (4-1/2 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 .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.**

**Comment:** The following table illustrates how basal area translates to number of trees and typical tree spacing. It is for background only and will be removed from the final ordinance.

Oregon Forest Practices Act Equivalent Reforestation Standards for Trees of Varying Diameters							
Avg. DBH of trees 11" or greater	Basal area (ft <sup>2</sup> ) per tree	# Trees equal to 80 ft <sup>2</sup> BA per acre	Avg. space between Trees (feet)	# Trees equal to 50 ft <sup>2</sup> BA per acre	Avg. space between trees (feet)	# Trees equal to 40 ft <sup>2</sup> BA per acre	Avg. space between trees (feet)
11	0.66	122	19	76	23	61	26
12	0.79	102	21	64	26	51	29
14	1.07	75	24	47	31	37	34
16	1.40	58	27	36	35	29	39
18	1.77	46	31	28	39	22	44
20	2.20	37	34	23	44	18	49
22	2.60	31	37	19	48	15	54
24	3.14	26	41	16	52	13	58
26	3.69	22	44	14	56	11	63
28	4.28	19	48	12	60	10	68
30	4.90	17	51	11	63	8	73
32	5.58	15	54	9	69	7	78

**Source:** Oregon’s Forest Protection Laws Revised, Second Edition, Oregon Forest Resources Institute.

[http://oregonforests.org/sites/default/files/publications/pdf/OR\\_For\\_Protect\\_Laws\\_2011.pdf](http://oregonforests.org/sites/default/files/publications/pdf/OR_For_Protect_Laws_2011.pdf)

**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.

Bold, double-underline text indicates **new** text. Single strikethrough is ~~deleted~~ text.

The non-bold, single-underlined text contains web links to the existing code.

**Diameter at breast height or DBH** means the diameter of the trunk, at its maximum cross section, measured 54 inches (4-1/2 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.

**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.

**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(s), 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.**

**Comment:** The following table illustrates the stocking levels prescribed by the Oregon Forest Practices Act (OFPA) for different site classes and tree stands of varying ages. The code references the OFPA standards but the table is not part of the ordinance. The City can refer to the OFPA without having to update its code every time the OFPA or its implementing rules are amended.

<b>Oregon Forest Practices Act Reforestation Requirements for High, Medium and Low Site</b>			
Site Class	Seedlings (less than 1 inch DBH) or >>>	Saplings & Poles (1-10 inches DBH) or >>>	Trees 11 inches and larger
High (Site Classes I, II and III)	200 per acre, or	120 trees per acre, or	80 square feet of basal area per acre
Medium (Site Classes IV and V)	125 per acre, or	75 trees per acre, or	50 square feet of basal area per acre
Low (Site Class VI)	100 per acre, or	60 trees per acre, or	40 square feet of basal area per acre

**Comment:** The definition of Large Forested Tract is a policy issue. At the October 7, 2014 City Council Study Session, Council considered a range of options, from one to four acres (with at least 50% tree canopy cover). The Council suggested the code accommodate a range of property sizes. The draft code uses one acre of forest land as a minimum threshold for applicability. A property must have at least one “forested” acre. The definition of “forested” is also a policy issue; based on input from the technical team, the definition of Large Forested Tract provides for two thresholds. One uses a simple “canopy cover” calculation, which in most cases can easily be made using the City’s online mapping program, and the other uses tree stocking level (basal area), which is adapted from the Oregon Forest Practices Act (OFPA). The OFPA contains reforestation standards for Site Classes, which are based on tree growth rates for in Western Oregon. The Forest Practices Act stocking level for Class I (“high”) is 120 trees per acre at least 11 inches DBH, or 80 square feet basal area per acre in 11-inch or larger trees. The stocking level for Class VI (“low”) is 60 trees per acre at this size tree, or 40 square feet basal area. The proposal is to use 5-inches DBH, instead of 11-inches, in calculating basal area because this is the minimum size “tree” requiring a permit for removal under the current Tree Code and anything smaller presumably does not contribute to “wooded character” (purpose). By contrast, the OFPA is intended to provide stocking levels for growing merchantable timber (not “wooded character”), so it uses 11 inches. (Under the OFPA, anything smaller than 1-10 inches DBH is considered “sapling or pole”, and trees smaller than 1 inch DBH are defined as seedlings.) By including saplings and poles in estimating stocking levels, the code can encourage their retention, which helps promote tree diversity (by age), and ultimately contributes to forest health and a more sustainable wooded character.

**Source:** Oregon’s Forest Protection Laws Revised, Second Edition, Oregon Forest Resources Institute.  
[http://oregonforests.org/sites/default/files/publications/pdf/OR\\_Forest\\_Protection\\_Laws\\_2011.pdf](http://oregonforests.org/sites/default/files/publications/pdf/OR_Forest_Protection_Laws_2011.pdf)

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**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 rowhouse, 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. Re-stocking means trees planted under a Forest Management Permit for reforestation. Stocking counts trees of all sizes and ages, including seedlings and young trees.**

**Source:** Oregon's Forest Protection Laws Revised, Second Edition, Oregon Forest Resources Institute.  
[http://oregonforests.org/sites/default/files/publications/pdf/OR\\_For\\_Protect\\_Laws\\_2011.pdf](http://oregonforests.org/sites/default/files/publications/pdf/OR_For_Protect_Laws_2011.pdf)

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 re-stocking, "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 4.5 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 shall be considered one tree. For the purposes of this chapter, English laurel, Portuguese laurel, photinia, arborvitae, poison oak, and English ivy shall not be considered a "tree."

**Source:** Amended definition of "Tree" based on the International Society of Arboriculture (ISA) definition. See <http://www.isa-arbor.com/education/onlineresources/dictionary.aspx>. This definition is also used by the City of Tigard Municipal Code (Chapter 18.120), except that both ISA and Tigard refer to "the scientific literature". A source document is needed for "scientific literature". Two options are: Trees to Know in Oregon, Oregon State University Extension Agency, and Sunset Western Garden Book. The Extension Agency book is recommended. Originally published in 1950 as "Extension Bulletin 697, the book has been updated several times, most recently in 2010. It contains color photographs and text, and is written for the lay reader.

**Comment:** The technical team generally agrees that limiting the definition of tree to those that are 5 inches DBH or larger fails to recognize the value of young trees in forest regeneration, and discourages their retention. However, the existing definition of tree is retained for properties other than large forested tracts. The definition should be reviewed when the City reviews the balance of the tree code.

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**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 5-inch DBH.**

**Source:** City of Lake Oswego Code, Section 55.02.020 Definitions. This is the existing threshold for tree permits. It is not proposed to change. The new section is created because the revised definition of tree includes trees that are smaller than 5 inches DBH (e.g., for restocking purposes) even though no permit is required to remove them.

**Comment:** As an alternative to requiring a permit, one option is to exempt (allow by right) tree removal where standard stocking levels are maintained, consistent with the Forest Practices Act or a similar local standard. That approach would rely on the honor system for property owners estimating current stocking levels and ensuring that they do not fall below the standard. It would also put the burden on the City to prove no violation has occurred when someone complains about tree removal/logging operations. If no permit is required the City would not know about a planned tree removal unless the property owner requests assistance or until someone complains. Equity is another consideration. If the City were to exempt owners of large properties (large scale tree removal), but not exempt residential property owners (smaller scale tree removal) that could be considered unfair or unreasonable. Therefore, a simple permit process, similar to the current Type I review for residential lots, is proposed for large forested properties. An owner of a large tract could obtain an over-the-counter permit to remove a small number of trees.

**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.



**55.02.035 Tree Removal in Conjunction with Major or Minor Development Permit.**

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).

**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

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- 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.

2. Type II Permit:

- a. A Type II permit is required prior to any tree removal application that does not qualify ~~for its~~ issuance ~~of as a~~ Type I permit, Dead Tree Removal Permit, Hazard Tree Removal Permit, Emergency Permit, Verification Permit, Topping Permit, ~~or~~ 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).

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.

- 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.

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- 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.

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 non-emergency 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.
- 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).

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.

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.

**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 55.02.070.**

**Comment:** This simply adds Forest Management Permit to the list of permit types so that it stands on its own and is not confused with other permit types.

**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;**

**Comment:** As an incentive to property owners to manage forest lands, the City could provide an on-site, pre-application meeting/consultation free of charge.

- 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 55.02.070.4;**
    - ii. **A Forest Management Plan, where an application is for a Major Forest Management Permit under LOC 55.02.070.4. 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.**

**Comment:** The technical team advised that “stocking” is a standard method of measuring the number of trees in a given area, and therefore is scalable to different tree species, ages of trees, and tree growth rates. However, desired stocking levels and species will differ between urban forests and commercial forestlands, so the above definition is not exclusive to species that provide merchantable timber.

- ~~iii.ii-~~ The anticipated date(s) of removal **(starting and stopping dates);**

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

~~v. iv.~~ A mitigation plan, if required pursuant to LOC 55.02.084(1), with information showing any proposed landscaping, ~~or~~-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.

**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:** The City Council should consider whether a filing fee for Forest Management Permits is appropriate, because the process is supposed to help owners of large forested properties improve forest health, not just cut trees. However, the cost of administering this program is unknown, so fees should be reviewed after the first year of implementation.

**55.02.070 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:**

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- a. Protected by a condition of approval of a development permit pursuant to the Lake Oswego Community Development Code (LOC Ch. 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 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. An erosion control permit approved by the City Manager pursuant to LOC Ch. 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.

**Comment:** The above provisions are intended to allow flexibility in removing any size tree for any reason where the reduction to stocking levels (number and volume of trees) is negligible\* and the above criteria (similar to the existing Type I criteria) are met. Item ‘c’ (erosion control) is added because the Minor Forest Management Permit allows removal of a larger number of trees than the current Type I procedure.

\*"Four square feet of basal area" is 10% of the recommended minimum stocking level of 40 square feet of basal area where the site class is "Low", and 5% of the recommended stocking level (80 square feet of basal area) where the site class is "High", under the Oregon Forest Practices Act. This is equivalent to 120 trees per acre for High site class lands, and 60 trees per acre on Low site class lands, where the trees average 11 inches DBH. If after tree removal the tract no longer meets the definition of large forested tract (canopy cover or basal area), then further tree removal would not be permitted under the Large Forested Tract provisions of LOC 55.02.070, but would be allowed subject to compliance with LOC 55.02.042 (e.g., Types I and II permits).

**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:**

**Comment:** A City arborist with expertise in silviculture (from the Parks Department or the Planning Department’s contract arborist) would review the request.

- 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 have a significant negative impact on the wooded character of the neighborhood, including maintenance of tree canopy cover and protection of views from adjacent public ways. 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 LOC 55.02.070;**

**Comment:** The above criteria add flexibility for property owners but they do not provide incentives for preparing a forest management plan. Profit-motive can be a strong incentive, however, current policy (protect big trees and do not permit tree removal for improving views) is contrary to profit-motive.

Fire protection is another consideration. Clackamas County Code contains standards for maintaining fuel breaks around dwellings. The code is specific to the siting of new homes, but it also prescribes landscape maintenance standards. It requires a “primary safety zone”, which is a fire fuel break extending a minimum distance around structures based on slope. The goal within the primary safety zone is to remove fuels that will produce flame lengths

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in excess of one foot. Vegetation within the primary safety zone may include green lawns and shrubs less than 24 inches in height. Trees are to be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, limbs and other dead vegetation must be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) are to be placed next to the structure. As slope increases, the primary safety zone increase away from the structure and down the slope. The City Council should consider whether it wants to include similar criteria.

**Source:** Clackamas County Zoning and Development Ordinance, Section 406.08.A Fire-Siting Standards for New Structures

**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 Ch. 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 2.c and 2.d, above, will be avoided; or, where impacts are unavoidable, how they will be minimized or mitigated;**

**Comment:** The above criterion is a safeguard for protecting neighbors against forestry activities that could be potentially harmful and that this code cannot anticipate. While it could be a disincentive to preparing a forest management plan (major permit), the trade-off seems appropriate.

- 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.**

**Source:** The above criteria are adapted from the Oregon Forest Practices Act and existing Tree Code. The criteria do not include the Type II requirement that tree removal be for purposes of landscaping or construction; those criteria are replaced by the following urban forest management objectives: “pest management; disease prevention and treatment; protection against catastrophic events, such as wildfire, 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...”

The criteria do not specify the City’s Native Plant List, because that list is limited to just a few species. Examples of trees that are not on that list which might be “exemplary specimens” are: sequoias, cypresses, pines (other than ponderosas), spruces, and others that were planted or have spread naturally/volunteered.

The Native Plant List includes the following trees: *Abies grandis* Grand Fir; *Arbutus menziesii* Madrone; *Acer macrophyllum* Bigleaf Maple; *Alnus rubra* Red Alder; *Cornus nutallii* Pacific Dogwood; *Fraxinus latifolia* Oregon Ash; *Pinus contorta* Shore Pine; *Pinus ponderosa* Ponderosa Pine (Willamette Valley variety); *Populus trichocarpa* Black Cottonwood; *Prunus emarginatus* Bitter Cherry; *Pseudotsuga menziesii* Douglas-Fir; *Quercus garryana* Oregon White Oak; *Rhamnus purshiana* Cascara; *Salix fluviatilis* Columbia River Willow; *Salix lasiandra* Pacific Willow; *Salix scouleriana* Scouler's Willow; *Salix sitchensis* Sitka Willow; *Taxus brevifolius* Western Yew; *Thuja plicata* Western Red Cedar; *Tsuga heterophylla* Western Hemlock.

**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
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.

**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 fourteen 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 4.5 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 fourteen consecutive days following the posting of the property.

**Source/Comment:** The above notice procedures are based on comments from technical team arborists M. Holen and T. Prager. They are intended to help the public understand proposed forest management activities, including potential impacts and protection measures for neighboring properties (e.g., wind throw). The procedure is also intended to provide flexibility for marking trees per industry standards.

2. Within two business days of the close of the fourteen 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.

**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 10 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 55.02.070; restocking may be required for Major Forest Management Permit under LOC 55.02.070.4.**

**Comment:** The above text is to clarify the difference between mitigation and restocking. Mitigation “rectifies, repairs or compensates for adverse impacts to a resource... caused by development” (LOC 50.10.003), and restocking is a forest management practice.

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.

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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.

**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 fourteen days of the date the notice of tentative decision was posted pursuant to LOC 55.02.082. Failure to file within the fourteen day period shall preclude such a request.

**Comment:** Should Forest Management Permit, Minor or Major, respectively, be subject to the same review procedure as Type 1 and Type 2 tree cutting permits. This is a policy issue. For example, should Forest Management Permits be subject to a Request for a Hearing, or should the staff decision be final unless appealed?

- 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 fourteen 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 (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 LOC 55.02.092.5.**
- 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.**

**Source:** The technical team recommended a longer expiration period than the current 60 day period for tree removal under a forest management permit, due to the duration of some forest management activities. A forest management plan for a large open space area may prescribe tree removal and restocking over several years. Development would be as defined in the Community Development Code

**Comment:** Submittal of an application for land division or development (e.g., new home construction) indicates the owner no longer intends to manage that portion of the property for forestry.

**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.

**Comment:** It is recommended the conditioning authority extend to Major Forest Management Permits because the approval criteria are discretionary.

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.

**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 7 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.

**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) 36 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.

**Article 55.06  
Heritage Trees.**

Sections:

55.06.010 Purpose; Definition.

55.06.020 Nomination.

55.06.030 Review Process.

55.06.040 Protection of Heritage Trees.

55.06.050 Recognition of Heritage Trees.

55.06.060 Removal of Heritage Tree Designation.

**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.

**Article 55.08  
Tree Protection.**

Sections:

55.08.010 Applicability.

55.08.020 Tree Protection Plan Required.

55.08.030 Tree Protection Measures Required.

55.08.040 Inspection.

**55.08.010 Applicability.**

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

(Ord. 2221, Add, 01/18/2000)

**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.

Bold, double-underline text indicates **new** text. Single strikethrough is ~~deleted~~ text.  
The non-bold, single-underlined text contains web links to the existing code.

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.

(Ord. 2221, Add, 01/18/2000)

**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.

(Ord. 2221, Add, 01/18/2000)

**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.

(Ord. 2221, Add, 01/18/2000)